# Drafting the Federal Constitution

A Rearrangement of Madison's Notes Giving Consecutive Developments of Provisions in the Constitution of the United States, Supplemented by Documents Pertaining to the Philadelphia Convention and to Ratification Processes, and Including Insertions by the Compiler


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# DEDICATION

THIS EFFORT TO MAKE THE WORK OF THE FOUNDERS MORE EFFECTIVE IN THE DEVELOPMENT OF CIVIC INTELLIGENCE IS DEDICATED TO THE MEMORY OF THOMAS DUCKETT BOYD, EXPONENT OF GOOD CITIZENSHIP, LOUISIANA'S OUTSTANDING STATESMAN OF PUBLIC EDUCATION FOR MORE THAN FORTY YEARS, LEADER IN THE ESTABLISHMENT OF THE SCHOOL SYSTEM ON PROFESSIONAL FOUNDATIONS, AND BUILDER OF THE STATE'S TWO OLDEST INSTITUTIONS FOR ADVANCED EDUCATION.

# PREFACE

The best guide to an understanding of the American federal system is Madison's Notes. This magnum opus of political documents is difficult to use for tracing the continuous development of propositions submitted to the Philadelphia Convention, because it is in essence a journal of proceedings portraying accurately deliberations on different subjects that occurred during each daily session. I have attempted to remove this difficulty by classifying the provisions of the completed Constitution on the basis of function and relationship, and rearranging Madison's record so as to show how each provision was consecutively evolved. Duplications of proceedings under this plan seem necessary to give encyclopedic completeness wherever structure and function are separately treated; otherwise scrappiness and detachment of parts would mar the purpose of the arrangement. It is hoped that this increased facility for the reader will make the processes and rationale of the drafters more accessible, and that use of this material will strengthen government of the people, by the people, for the people, in the United States by emphasizing the enduring principles incorporated in our supreme law.

This main purpose of the book is supplemented by the inclusion of sources from standard collections relative to the evolution of drafting machinery and ratification of the Constitution. In Part One the documents in Chapters 1 and 4, unlike Madison's Notes, are unedited and appear as they are printed in the 1927 edition of *Documents Illustrative of the Formation of the Union of the American States,* selected by Charles C. Tansill. Madison's Notes, which are only slightly

edited in Chapter 1, are based on E. H. Scott's *Journal of the Constitutional Convention Kept by James Madison*. Madison's Notes in Chapters 2 and 3, which take the Convention up to the date of the opening of the debates on June 19, and in Chapter 4, which deals with later developments in the House and in the committees, are taken basically from Galliard Hunt and James Brown Scott's *The Debates in the Federal Convention of 1787 Which Framed the Constitution of the United States of America, Reported by James Madison, A Delegate from the State of Virginia*, with modernizations by the compiler. *The Formation of the Union* and Scott's *Journal* are used as minor texts for the collation. In cases of questionable readings, the concurrence of two texts out of the three is accepted. Parts Two, Three, Four, and Five are a continuation of this scheme of editing Madison's Notes.

For the modernization of Madison's Notes, I have found E. H. Scott's edition of the *Journal* helpful. I have inserted my own explanations, comparisons, analyses, and evaluations wherever they promise to be helpful, and I have given citations and references for further reading.

The laborious task of typing material selected for this book and checking copy for the printer was efficiently performed by Mrs. Warrene Hyner Carter, Secretary in the Department of History at Louisiana State University. Her patience and undiscouraged adherence to a tedious undertaking actually pulled it out of the Slough of Despond. The courtesy and generosity of Dr. Fred C. Frey, Dean of the College of Arts and Sciences, and Professor Walter Prichard, Head of the Department of History, who made arrangements for Mrs. Carter's indispensable services, have placed me under lasting obligations. I am grateful for the aid of Dr. Marcus M. Wilkerson, Director of the University Press, whose sympathetic conferences enabled me to hasten preparations for final publication.

A. T. P.

Baton Rouge, Louisiana
September 17, 1940

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PART ONE

# HISTORIC FACTORS AND PROCESSES

## Introduction

A volume designed to tell a consecutive story of how the federal Constitution was drafted by reproducing source material, selected and arranged so as to accomplish the end in view, would be incomplete without an introduction consisting of documents pertaining to conditions that brought drafting machinery into existence, and other material not properly included in a special study of what has been happily called the living Constitution, but necessary nevertheless to a perspective of drafting mechanisms and processes. Accordingly, material used for this purpose has been brought together as Part One of this volume, containing four chapters dealing with the evolution of drafting machinery, plans submitted to the Convention, stages in the development of the Virginia plan, and the ratification of the completed Constitution. To introduce selected documents, to provide yoking material, and to fill gaps, the compiler has used insertions of his own composition wherever they seemed helpful.

CHAPTER 1

# EVOLUTION OF DRAFTING MACHINERY

## The Annapolis Convention

[The pressure of critical conditions under the Articles of Confederation, and the growing helplessness of the Congress to deal adequately with the situation, produced in every state a widespread conviction that a new constitutional system must be devised to secure an imperative governmental authority operating throughout the Union, without which complete disruption and disintegration were inevitable. Readers of American history are familiar with the cumulative effects of this constructive public opinion. Its best expression is found in the proceedings of the Annapolis Convention printed below.]

### PROCEEDINGS OF COMMISSIONERS TO REMEDY DEFECTS OF THE FEDERAL GOVERNMENT

ANNAPOLIS IN THE STATE OF MARYLAND
SEPTEMBER 11TH 1786

At a meeting of Commissioners, from the States of New York, New Jersey, Pennsylvania, Delaware and Virginia—

Present

| | |
|---|---|
| Alexander Hamilton<br>Egbert Benson | New York |
| Abraham Clarke<br>William C. Houston<br>James Schuarman | New Jersey |

| | |
|---|---|
| Tench Coxe | Pennsylvania |
| George Read | Delaware |
| John Dickinson | Delaware |
| Richard Bassett | Delaware |
| Edmund Randolph | Virginia |
| James Madison, Junior | Virginia |
| Saint George Tucker | Virginia |

Mr. Dickinson was unanimously elected Chairman.

The Commissioners produced their Credentials from their respective States; which were read.

After a full communication of Sentiments, and deliberate consideration of what would be proper to be done by the Commissioners now assembled, it was unanimously agreed: that a Committee be appointed to prepare a draft of a Report to be made to the States having Commissioners attending at this meeting—Adjourned 'till Wednesday Morning.

WEDNESDAY SEPTEMBER 13TH 1786

Met agreeable to Adjournment.

The Committee, appointed for that purpose, reported the draft of the report; which being read, the meeting proceeded to the consideration thereof, and after some time spent therein. Adjourned 'till tomorrow Morning.

THURSDAY SEPTR. 14TH 1786

Met agreeable to Adjournment.

The meeting resumed the consideration of the draft of the Report, and after some time spent therein, and amendments made, the same was unanimously agreed to, and is as follows, to wit.

*To the Honorable, the Legislatures of Virginia, Delaware, Pennsylvania, New Jersey, and New York—*

The Commissioners from the said States, respectively assembled at Annapolis, humbly beg leave to report.

That, pursuant to their several appointments, they met, at

Annapolis in the State of Maryland, on the eleventh day of September Instant, and having proceeded to a Communication of their powers; they found that the States of New York, Pennsylvania, and Virginia, had, in substance, and nearly in the same terms, authorised their respective Commissioners "to meet such Commissioners as were, or might be, appointed by the other States in the Union, at such time and place, as should be agreed upon by the said Commissioners to take into consideration the trade and Commerce of the United States, to consider how far an uniform system in their commercial intercourse and regulations might be necessary to their common interest and permanent harmony, and to report to the several States such an Act, relative to this great object, as when unanimously ratified by them would enable the United States in Congress assembled effectually to provide for the same."

That the State of Delaware, had given similar powers to their Commissioners, with this difference only, that the Act to be framed in virtue of those powers, is required to be reported "to the United States in Congress assembled, to be agreed to by them, and confirmed by the Legislatures of every State."

That the State of New Jersey had enlarged the object of their appointment, empowering their Commissioners, "to consider how far an uniform system in their commercial regulations and *other important matters*, might be necessary to the common interest and permanent harmony of the several States," and to report such an Act on the subject, as when ratified by them "would enable the United States in Congress assembled, effectually to provide for the exigencies of the Union."

That appointments of Commissioners have also been made by the States of New Hampshire, Massachusetts, Rhode Island, and North Carolina, none of whom however have attended; but that no information has been received by your Commissioners, of any appointment having been made by the States of Connecticut, Maryland, South Carolina or Georgia.

That the express terms of the powers to your Commissioners supposing a deputation from all the States, and having for object the Trade and Commerce of the United States, Your Commis-

sioners did not conceive it advisable to proceed on the business of their mission, under the Circumstance of so partial and defective a representation.

Deeply impressed however with the magnitude and importance of the object confided to them on this occasion, your Commissioners cannot forbear to indulge an expression of their earnest and unanimous wish, that speedy measures may be taken, to effect a general meeting, of the States, in a future Convention, for the same, and such other purposes, as the situation of public affairs, may be found to require.

If in expressing this wish, or in intimating any other sentiment, your Commissioners should seem to exceed the strict bounds of their appointment, they entertain a full confidence, that a conduct, dictated by an anxiety for the welfare, of the United States, will not fail to receive an indulgent construction.

In this persuasion, your Commissioners submit an opinion, that the Idea of extending the powers of their Deputies, to other objects, than those of Commerce, which has been adopted by the State of New Jersey, was an improvement on the original plan, and will deserve to be incorporated into that of a future Convention; they are the more naturally led to this conclusion, as in the course of their reflections on the subject, they have been induced to think, that the power of regulating trade is of such comprehensive extent, and will enter so far into the general System of the foederal government, that to give it efficacy, and to obviate questions and doubts concerning its precise nature and limits, may require a correspondent adjustment of other parts of the Foederal System.

That there are important defects in the system of the Foederal Government is acknowledged by the Acts of all those States, which have concurred in the present Meeting; That the defects, upon a closer examination, may be found greater and more numerous, than even these acts imply, is at least so far probable, from the embarrassments which characterise the present State of our national affairs, foreign and domestic, as may reasonably be supposed to merit a deliberate and candid discussion, in some

mode, which will unite the Sentiments and Councils of all the States. In the choice of the mode, your Commissioners are of opinion, that a Convention of Deputies from the different States, for the special and sole purpose of entering into this investigation, and digesting a plan for supplying such defects as may be discovered to exist, will be entitled to a preference from considerations, which will occur, without being particularised.

Your Commissioners decline an enumeration of those national circumstances on which their opinion respecting the propriety of a future Convention, with more enlarged powers, is founded; as it would be an useless intrusion of facts and observations, most of which have been frequently the subject of public discussion, and none of which can have escaped the penetration of those to whom they would in this instance be addressed. They are however of a nature so serious, as, in the view of your Commissioners to render the situation of the United States delicate and critical, calling for an exertion of the united virtue and wisdom of all the members of the Confederacy.

Under this impression, Your Commissioners, with the most respectful deference, beg leave to suggest their unanimous conviction, that it may essentially tend to advance the interests of the union, if the States, by whom they have been respectively delegated, would themselves concur, and use their endeavours to procure the concurrence of the other States, in the appointment of Commissioners, to meet at Philadelphia on the second Monday in May next, to take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the constitution of the Foederal Government adequate to the exigencies of the Union; and to report such an Act for that purpose to the United States in Congress assembled, as when agreed to, by them, and afterwards confirmed by the Legislatures of every State, will effectually provide for the same.

Though your Commissioners could not with propriety address these observations and sentiments to any but the States they have the honor to Represent, they have nevertheless concluded from

motives of respect, to transmit Copies of this Report to the United States in Congress assembled, and to the executives of the other States.

By order of the Commissioners.

Dated at Annapolis
September 14th, 1786

Resolved, that the Chairman sign the aforegoing Report in behalf of the Commissioners.

Then adjourned without day—

| | |
|---|---|
| Egbt. Benson<br>Alexander Hamilton | New York |
| Abra: Clark<br>Wm. Chll. Houston<br>Js. Schureman | New Jersey |
| Tench Coxe | Pennsylvania |
| Geo: Read<br>John Dickinson<br>Richard Bassett | Delaware |
| Edmund Randolph<br>Js. Madison Jr.<br>St. George Tucker | Virginia |

## Summoning the Federal Convention

[More than five months passed before Congress acted on the Annapolis recommendations. In the meanwhile, six states appointed delegates to the Convention; namely, Virginia, New Jersey, Pennsylvania, North Carolina, Delaware, and Georgia. The last obstacle to the calling of the Convention was removed by Congress whose action recorded in the proceedings of February 21, 1787, printed below, secured the sanction of the only body authorized by the Articles of Confederation to propose amendments to the organic law.]

REPORT OF PROCEEDINGS IN CONGRESS,

WEDNESDAY FEBY. 21, 1787

Congress assembled as before.

The report of a grand commee. consisting of Mr. Dane Mr. Varnum Mr. S. M. Mitchell Mr. Smith Mr. Cadwallader Mr. Irwine Mr. N. Mitchell Mr. Forrest Mr. Grayson Mr. Blount Mr. Bull & Mr. Few, to whom was referred a letter of 14 Septr. 1786 from J. Dickinson written at the request of Commissioners from the States of Virginia Delaware Pennsylvania New Jersey & New York assembled at the City of Annapolis together with a copy of the report of the said commissioners to the legislatures of the States by whom they were appointed, being an order of the day was called up & which is contained in the following resolution viz

"Congress having had under consideration the letter of John Dickinson esqr. chairman of the Commissioners who assembled at Annapolis during the last year also the proceedings of the said commissioners and entirely coinciding with them as to the inefficiency of the federal government and the necessity of devising such farther provisions as shall render the same adequate to the exigencies of the Union do strongly recommend to the different legislatures to send forward delegates to meet the proposed convention on the second Monday in May next at the city of Philadelphia"

The delegates for the state of New York thereupon laid before Congress Instructions which they had received from their constituents, & in pursuance of the said instructions moved to postpone the farther consideration of the report in order to take up the following proposition to wit

"That it be recommended to the States composing the Union that a convention of representatives from the said States respectively be held at ——— on ——— for the purpose of revising the Articles of Confederation and perpetual Union between the United States of America and reporting to the United States in Congress assembled and to the States respectively such alterations

and amendments of the said Articles of Confederation as the representatives met in such convention shall judge proper and necessary to render them adequate to the preservation and support of the Union"

On the question to postpone for the purpose above mentioned the yeas & nays being required by the delegates for New York.

| | | | |
|---|---|---|---|
| Massachusetts | Mr. King | ay | ay |
| | Mr. Dane | ay | |
| Connecticut | Mr. Johnson | ay | d |
| | Mr. S. M. Mitchell | no | |
| New York | Mr. Smith | ay | ay |
| | Mr. Benson | ay | |
| New Jersey | Mr. Cadwallader | ay | no |
| | Mr. Clarke | no | |
| | Mr. Schurman | no | |
| Pennsylvania | Mr. Irwine | no | no |
| | Mr. Meredith | ay | |
| | Mr. Bingham | no | |
| Delaware | Mr. N. Mitchell | no | x |
| Maryland | Mr. Forest | no | x |
| Virginia | Mr. Grayson | ay | ay |
| | Mr. Madison | ay | |
| North Carolina | Mr. Blount | no | no |
| | Mr. Hawkins | no | |
| South Carolina | Mr. Bull | no | no |
| | Mr. Kean | no | |
| | Mr. Huger | no | |
| | Mr. Parker | no | |
| Georgia | Mr. Few | ay | d |
| | Mr. Pierce | no | |

So the question was lost.

A motion was then made by the delegates for Massachusetts to postpone the farther consideration of the report in order to take into consideration a motion which they read in their place, this being agreed to, the motion of the delegates for Massachusetts was taken up and being amended was agreed to as follows

Whereas there is provision in the Articles of Confederation & perpetual Union for making alterations therein by the assent of a Congress of the United States and of the legislatures of the several States; And whereas experience hath evinced that there are defects in the present Confederation, as a mean to remedy which several of the States and particularly the State of New York by express instructions to their delegates in Congress have suggested a convention for the purposes expressed in the following resolution and such convention appearing to be the most probable mean of establishing in these states a firm national government.

Resolved that in the opinion of Congress it is expedient that on the second Monday in May next a Convention of delegates who shall have been appointed by the several states be held at Philadelphia for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein as shall when agreed to in Congress and confirmed by the states render the federal constitution adequate to the exigencies of Government & the preservation of the Union.

## Appointment of Delegates

[All states except Rhode Island were represented in the Philadelphia Convention. In the selection of delegates they naturally followed the method used for the appointment of members of Congress under the Articles of Confederation. The documents printed below are typical credentials empowering state delegations to participate in the deliberations of the Convention.]

VIRGINIA

GENERAL ASSEMBLY begun and held at the Public Buildings in the City of Richmond on Monday the sixteenth day of October in the Year of our Lord one thousand seven hundred and Eighty six

AN ACT for appointing Deputies from this Commonwealth to a Convention proposed to be held in the City of Philadelphia in May next for the purpose of revising the federal Constitution.

WHEREAS the Commissioners who assembled at Annapolis on the fourteenth day of September last for the purpose of devising and reporting the means of enabling Congress to provide effectually for the Commercial Interests of the United States have represented the necessity of extending the revision of the foederal System to all it's defects and have recommended that Deputies for that purpose be appointed by the several Legislatures to meet in Convention in the City of Philadelphia on the second [Mon]day of May next a provision which was preferable to a discussion of the subject in Congress where it might be too much interrupted by the ordinary business before them and where it would besides be deprived of the valuable Counsels of sundry Individuals who are disqualified by the Constitution or Laws of particular States or restrained by peculiar circumstances from a Seat in that Assembly: AND WHEREAS the General Assembly of this Commonwealth taking into view the actual situation of the Confederacy as well as reflecting on the alarming representations made from time to time by the United States in Congress particularly in their Act of the fifteenth day of February last can no longer doubt that the Crisis is arrived at which the good People of America are to decide the solemn question whether they will by wise and magnanimous Efforts reap the just fruits of that Independence which they have so gloriously acquired and of that Union which they have cemented with so much of their common Blood, or whether by giving way to unmanly Jealousies and Prejudices or to partial and transitory Interests they will renounce the auspicious blessings prepared for them by the Revolution, and furnish to its Enemies an eventual Triumph over

those by whose virtue and valor it has been accomplished: AND WHEREAS the same noble and extended policy and the same fraternal and affectionate Sentiments which originally determined the Citizens of this Commonwealth to unite with their Bretheren of the other States in establishing a Foederal Government cannot but be Felt with equal force now as motives to lay aside every inferior consideration and to concur in such farther concessions and Provisions as may be necessary to secure the great Objects for which that Government was instituted and to render the *United States* as happy in peace as they have been glorious in War BE IT THEREFORE ENACTED by the General Assembly of the Commonwealth of Virginia that seven Commissioners be appointed by joint Ballot of both Houses of Assembly who or any three of them are hereby authorized as Deputies from this Commonwealth to meet such Deputies as may be appointed and authorized by other States to assemble in Convention at Philadelphia as above recommended and to join with them in devising and discussing all such Alterations and farther Provisions as may be necessary to render the Foederal Constitution adequate to the Exigencies of the Union and in reporting such an Act for that purpose to the United States in Congress as when agreed to by them and duly confirmed by the several States will effectually provide for the same. AND BE IT FURTHER ENACTED that in case of the death of any of the said Deputies or of their declining their appointments the Executive are hereby authorized to supply such Vacancies. AND the Governor is requested to transmit forthwith a Copy of this Act to the United States in Congress and to the Executives of each of the States in the Union.

JOHN JONES Speaker of the Senate

Signed JOSEPH PRENTIS, Speaker of the House of Delegates

A true Copy from the Inrollment
John Beckley Clk House Dels.

In the House of Delegates
Monday the 4th of December 1786.

THE HOUSE according to the Order of the Day proceeded by

joint Ballot with the Senate to the appointment of Seven Deputies from this Commonwealth to a Convention proposed to be held in the City of Philadelphia in May next for the purpose of revising the Foederal Constitution, and the Members having prepared Tickets with the names of the Persons to be appointed, and deposited the same in the Ballot-boxes, Mr. Corbin, Mr. Matthews, Mr. David Stuart, Mr. George Nicholas, Mr. Richard Lee, Mr. Wills, Mr. Thomas Smith, Mr. Goodall and Mr. Turberville were nominated a Committee to meet a Committee from the Senate in the Conference-Chamber and jointly with them to examine the Ballot-boxes and report to the House on whom the Majority of Votes should fall. The Committee then withdrew and after some time returned into the House and reported that the Committee had, according to order, met a Committee from the Senate in the Conference-Chamber, and jointly with them examined the Ballot-boxes and found a majority of Votes in favor of George Washington, Patrick Henry, Edmund Randolph, John Blair, James Madison, George Mason and George Wythe Esquires.

Extract from the Journal,
JOHN BECKLEY Clk House Dels.

{Attest JOHN BECKLEY
Clk. H. Dels.}

In the House of Senators
Monday the 4th of December 1786.

THE SENATE according to the Order of the Day proceeded by joint Ballot with the House of Delegates to the Appointment of Seven Deputies from this Commonwealth to a Convention proposed to be held in the City of Philadelphia in May next for the purpose of revising the Foederal Constitution, and the Members having prepared Tickets with the names of the Persons to be appointed, and deposited the same in the Ballot-boxes, Mr. Anderson, Mr. Nelson and Mr. Lee were nominated a Committee to meet a Committee from the House of Delegates in the Conference-Chamber and joinly with them to examine the Ballot-boxes

and report to the House on whom the Majority of Votes should fall. The Committee then withdrew and after some time returned into the House and reported that the Committee had, according to order, met a Committee from the House of Delegates in the Conference-Chamber, and jointly with them examined the Ballot-boxes and found a Majority of Votes in favor of George Washington, Patrick Henry Edmund Randolph, John Blair, James Madison George Mason and George Wythe Esquires.

Extract from the Journal
JOHN BECKLEY Clk, H. Ds.

Attest.
H. BROOK Clk S.

VIRGINIA TO WIT
(Seal)

I do Certify and make known, to all whom it may Concern, that John Beckley Esquire, is Clerk of the House of Delegates for this Commonwealth, and the proper Officer for attesting the proceedings of the General Assembly of the said Commonwealth. And that full Faith and Credit ought to be given to all things attested by the said John Beckley Esquire, by Virtue of his Office aforesaid.

Given under my hand as Governor of the Commonwealth of Virginia and under the Seal thereof, at Richmond this fourth day of May, one thousand seven hundred and Eighty seven.

EDM: RANDOLPH

VIRGINIA TO WIT.
(Seal)

I do hereby Certify, that Patrick Henry, Esquire, one of the seven Commissioners appointed by joint ballot of both Houses of Assembly of the Commonwealth of Virginia, authorized as a Deputy therefrom, to meet such Deputies as might be appointed and authorized by other States to assemble in Philadelphia and to join with them in devising and discussing all such Alterations and further Provisions, as might be necessary to

render the Foederal Constitution adequate to the exigencies of the Union; and in reporting such an Act for that purpose to the United States in Congress, as when agreed to by them and duly confirmed by the several States, might effectually provide for the same, did decline his appointment aforesaid; and thereupon in pursuance of an Act of the General Assembly of the said Commonwealth intituled "An Act for appointing Deputies from this Commonwealth to a Convention proposed to be held in the City of Philadelphia in May next, for the purpose of revising the Foederal Constitution" I do hereby with the advice of the Council of State, supply the said Vacancy by nominating James McClurg, Esquire, a Deputy for the Purposes aforesaid.

Given under my Hand as Governor of the said Commonwealth and under the Seal thereof this second day of May in the Year of our Lord One thousand seven hundred and eighty seven.

EDM: RANDOLPH

PENSYLVANIA

An Act appointing Deputies to the Convention intended to be held in the City of Philadelphia for the purpose of revising the foederal Constitution.

Section 1st Whereas the General Assembly of this Commonwealth taking into their serious Consideration the Representations heretofore made to the Legislatures of the several States in the Union by the United States in Congress Assembled, and also weighing the difficulties under which the Confederated States now labour, are fully convinced of the necessity of revising the federal Constitution for the purpose of making such Alterations and amendments as the exigencies of our Public Affairs require. And Whereas the Legislature of the State of Virginia have already passed an Act of that Commonwealth empowering certain Commissioners to meet at the City of Philadelphia in May next, a Convention of Commissioners or Deputies from the different States; And the Legislature of this State are fully sensible of the important advantages which may be derived to the United States,

and every of them from co-operating with the Commonwealth of Virginia, and the other States of the Confederation in the said Design.

Section 2nd Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pensylvia in General Assembly met, and by the Authority of the same, That Thomas Mifflin, Robert Morris, George Clymer, Jared Ingersoll, Thomas Fitzsimmons, James Wilson and Governeur Morris Esquires, are hereby appointed Deputies from this State to meet in the Convention of the Deputies of the respective States of North America to be held at the City of Philadelphia on the second day of the Month of May next; And the said Thomas Mifflin, Robert Morris, George Clymer, Jared Ingersoll, Thomas Fitzsimmons, James Wilson and Governeur Morris Esquires, or any four of them, are hereby constituted and appointed Deputies from this State, with Powers to meet such Deputies as may be appointed and authorized by the other States, to assemble in the said Convention at the City aforesaid, and to join with them in devising, deliberating on, and discussing, all such alterations and further Provisions, as may be necessary to render the foederal Constitution fully adequate to the exigencies of the Union, and in reporting such Act or Acts for that purpose to the United States in Congress Assembled, as when agreed to by them and duly confirmed by the several States, will effectually provide for the same.

Section 3d And be it further enacted by the Authority aforesaid, That in case any of the sd Deputies hereby nominated, shall happen to die, or to resign his or their Appointment or Appointments, the Supreme Executive Council shall be and hereby are empowered and required, to nominate and appoint other Persons or Persons in lieu of him or them so deceased, or who has or have so resigned, which Person or Persons, from and after such Nomination and Appointment, shall be and hereby are declared to be vested with the same Powers respectively, as any of the Deputies Nominated and Appointed by this Act, is vested with by the same: Provided Always, that the Council are not

hereby authorised, nor shall they make any such Nomination or Appointment, except in Vacation and during the Recess of the General Assembly of this State.

Signed by Order of the House

{Seal of the Laws of Pensylvania} THOMAS MIFFLIN Speaker

Enacted into a Law at Philadelphia on Saturday December the thirtieth in the Year of our Lord one thousand seven hundred and Eighty six.

PETER ZACHARY LLOYD
Clerk of the General Assembly.

I Mathew Irwin Esquire Master of the Rolls for the State of Pensylvania Do Certify the Preceding Writing to be a true Copy (or Exemplification) of a certain Act of Assembly lodged in my Office.

In Witness whereof I have hereunto set my Hand and Seal of Office the 15 May A. D. 1787.
(Seal.)

MATHW. IRWINE
M. R.

(Seal)

A Supplement to the Act entitled "An Act appointing Deputies to the Convention intended to be held in the City of Philadelphia for the purpose of revising the Federal Constitution.

Section 1st Whereas by the Act to which this Act is a Supplement, certain Persons were appointed as Deputies from this State to sit in the said Convention: And Whereas it is the desire of the General Assembly that His Excellency Benjamin Franklin Esquire, President of this State should also sit in the said Convention as a Deputy from this State—therefore

Section 2d Be it enacted and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pensylvania, in General Assembly met, and by the Authority of the same, that His Excellency Benjamin Franklin Esquire, be, and he is hereby, appointed and authorised to sit in the said Convention as a Deputy from this State in addition to the Persons heretofore

appointed: And that he be, and he hereby is invested with like Powers and authorities as are invested in the said Deputies or any of them.

Signed by Order of the House

THOMAS MIFFLIN Speaker.

Enacted into a Law at Philadelphia on Wednesday the twenty eighth day of March, in the Year of our Lord one thousand seven hundred & eighty seven.

PETER ZACHARY LLOYD
Clerk of the General Assembly.

I Mathew Irwine Esquire, Master of the Rolls for the State of Pensylvania Do Certify the above to be a true Copy (or Exemplification) of a Supplement to a certain Act of Assembly which Supplement is lodged in my Office

In Witness whereof I have hereunto set my Hand and Seal of Office the 15 May Ao. D. 1787.

(Seal)

MATHW IRWINE
M. R.

STATE OF CONNECTICUT

(Seal.)

At a General Assembly of the State of Connecticut in America, holden at Hartford on the second Thursday of May, Anno Domini 1787.

An Act for appointing Delegates to meet in a Convention of the States to be held at the City of Philadelphia on the second Monday of May instant.

Whereas the Congress of the United States by their Act of the twenty first of February 1787 have recommended that on the second Monday of May instant, a Convention of Delegates, who shall have been appointed by the several States, be held at Philadelphia for the sole and express purpose of revising the Articles of Confederation.

Be it enacted by the Governor, Council and Representatives in General Court Assembled and by the Authority of the same.

That the Honorable William Samuel Johnson, Roger Sher-

man, and Oliver Ellsworth Esquires. be and they hereby are appointed Delegates to attend the said Convention. and are requested to proceed to the City of Philadelphia for that purpose without delay; And the said Delegates, and in case of sickness or accident, such one or more of them as shall actually attend the said Convention, is and are hereby authorized and empowered to Represent this State therein, and to confer with such Delegates appointed by the several States, for the purposes mentioned in the said Act of Congress that may be present and duly empowered to act in said Convention, and to discuss upon such Alterations and Provisions agreeable to the general Principles of Republican Government as they shall think proper to render the federal Constitution adequate to the exigencies of Government and, the preservation of the Union; And they are further directed, pursuant to the said Act of Congress to report such alterations and provisions as may be agreed to by a majority of the United States represented in Convention to the Congress of the United States, and to the General Assembly of this State.

A true Copy of Record
Examd
By GEORGE WYLLYS Secy.

LIST OF DELEGATES APPOINTED BY THE STATES REPRESENTED IN THE FEDERAL CONVENTION.

Reprinted from *Journal, Acts and Proceedings of the Convention which formed the Constitution of the United States*, John Quincy Adams, Editor.

| *From* | | *Attended* |
|---|---|---|
| New Hampshire. | 1. John Langdon, | July 23, 1787 |
| | *John Pickering,* | |
| | 2. Nicholas Gilman, | July 23, |
| | *Benjamin West.* | |
| Massachusetts. | *Francis Dana,* | |
| | Elbridge Gerry, | May 29, |
| | 3. Nathaniel Gorham, | May 28, |
| | 4. Rufus King, | May 25, |
| | Caleb Strong, | May 28, |

| *From* | | *Attended* |
|---|---|---|
| Rhode Island. | [No appointment.] | |
| Connecticut. | 5. Wm. Sam. Johnson, | June 2, |
| | 6. Roger Sherman, | May 30, |
| | Oliver Elsworth, | May 29, |
| New York. | Robert Yates, | May 25, |
| | 7. Alexander Hamilton, | do. |
| | John Lansing, | June 2, |
| New Jersey. | 8. William Livingston, | June 5, |
| | 9. David Brearley, | May 25, |
| | William C. Houston, | do. |
| | 10. William Patterson, | do. |
| | *John Neilson.* | |
| | *Abraham Clark.* | |
| | 11. Jonathan Dayton, | June 21, |
| Pennsylvania. | 12. Benjamin Franklin, | May 28, |
| | 13. Thomas Mifflin, | do. |
| | 14. Robert Morris, | May 25, |
| | 15. George Clymer, | May 28, |
| | 16. Thomas Fitzsimons, | May 25, |
| | 17. Jared Ingersoll, | May 28, |
| | 18. James Wilson, | May 25, |
| | 19. Gouverneur Morris, | do. |
| Delaware. | 20. George Read, | do. |
| | 21. Gunning Bedford, jr. | May 28, |
| | 22. John Dickinson, | May 28, |
| | 23. Richard Basset, | May 25, |
| | 24. Jacob Broom, | do. |
| Maryland. | 25. James M'Henry, | May 29, |
| | 26. Daniel of St. Thomas Jenifer, | June 2, |
| | 27. Daniel Carroll, | July 9, |
| | John Francis Mercer, | Aug. 6, |
| | Luther Martin, | June 9, |
| Virginia. | 28. George Washington, | May 25, |
| | *Patrick Henry,* | (declined.) |
| | Edmund Randolph, | May 25, |

| *From* | | *Attended* |
|---|---|---|
| | 29. John Blair, | do. |
| | 30. James Madison, jr | do. |
| | George Mason, | do. |
| | George Wythe, | do. |
| | James M'Clurg, (in the room of P. Henry) | do. |
| North | *Richard Caswell,* | (resigned.) |
| Carolina. | Alexander Martin, | May 25. |
| | William R. Davie, | do. |
| | 31. William Blount, (in the room of R. Caswell) | June 20. |
| | *Willie Jones,* | (declined.) |
| | 32. Richard D. Spaight, | May 25. |
| | 33. Hugh Williamson (in the room of W. Jones) | May 25. |
| South | 34. John Rutledge, | do. |
| Carolina. | 35. Charles C. Pinckney, | do. |
| | 36. Charles Pinckney, | do. |
| | 37. Pierce Butler, | do. |
| Georgia. | 38. William Few. | do. |
| | 39. Abraham Baldwin, | June 11, |
| | William Pierce, | May 31. |
| | *George Walton.* | |
| | William Houstoun, | June 1, |
| | *Nathaniel Pendleton.* | |

Those with numbers before their names, signed the Constitution ..... 39
Those in Italicks, never attended ..... 10
Members who attended, but did not sign the Constitution .. 16

65

## Members of the Federal Convention

[The author of the lively sketches reproduced below was a delegate from Georgia in the Philadelphia Convention. Little is known about his early life. He made an honorable record as

an officer in the revolutionary army, afterwards served as a member of the Congress of the Confederation, and left among his papers fragmentary notes on the proceedings of the Constitutional Convention. Business misfortunes called him away from the Convention and prevented his participation in deliberations during the last days of its session. The biographical comments in these sketches add nothing to our knowledge of the outstanding leaders, but contain valuable information about delegates who, notwithstanding the sound judgment recorded in their votes, might otherwise sink into oblivion.]

CHARACTERS IN THE CONVENTION OF THE STATES HELD AT PHILADELPHIA, MAY 1787.

[By William Pierce, Delegate from Georgia.]

From New Hampshire.

Jno. Langdon Esqr. and Nichs. Gilman Esquire.

Mr. Langdon is a Man of considerable fortune, possesses a liberal mind, and a good plain understanding.—about 40 years old.*

Mr. Gilman is modest, genteel, and sensible. There is nothing brilliant or striking in his character, but there is something respectable and worthy in the Man.—about 30 years of age.

From Massachusetts.

Rufus King, Natl. Gorham, Gerry and Jno. Strong[1] Esquires.

Mr. King is a Man much distinguished for his eloquence and great parliamentary talents. He was educated in Massachusetts, and is said to have good classical as well as legal knowledge. He has served for three years in the Congress of the United States with great and deserved applause, and is at this time high in the confidence and approbation of his Country-men. This Gentleman is about thirty three years of age, about five feet ten Inches high, well formed, an handsome face, with a strong expressive

* Pierce's statements of age, throughout the paper, are only approximately correct.

1 *Caleb* Strong.

Eye, and a sweet high toned voice. In his public speaking there is something peculiarly strong and rich in his expression, clear, and convincing in his arguments, rapid and irresistible at times in his eloquence but he is not always equal. His action is natural, swimming, and graceful, but there is a rudeness of manner sometimes accompanying it. But take him *tout en semble*, he may with propriety be ranked among the Luminaries of the present Age.

Mr. Gorham is a Merchant in Boston, high in reputation, and much in the esteem of his Country-men. He is a Man of very good sense, but not much improved in his education. He is eloquent and easy in public debate, but has nothing fashionable or elegant in his style;—all he aims at is to convince, and where he fails it never is from his auditory not understanding him, for no Man is more perspicuous and full. He has been President of Congress, and three years a Member of that Body. Mr. Gorham is about 46 years of age, rather lusty, and has an agreable and pleasing manner.

Mr. Gerry's character is marked for integrity and perseverance. He is a hesitating and laborious speaker;—possesses a great degree of confidence and goes extensively into all subjects that he speaks on, without respect to elegance or flower of diction. He is connected and sometimes clear in his arguments, conceives well, and cherishes as his first virtue, a love for his Country. Mr. Gerry is very much of a Gentleman in his principles and manners;—he has been engaged in the mercantile line and is a Man of property. He is about 37 years of age.

Mr. Strong is a Lawyer of some eminence,—he has received a liberal education, and has good connections to recommend him. As a Speaker he is feeble, and without confidence. This Gentn. is about thirty five years of age, and greatly in the esteem of his Colleagues.

From Connecticut.

Saml. Johnson, Roger Sherman, and W. Elsworth[2] Esquires.

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[2] *Oliver* Ellsworth.

Dr. Johnson is a character much celebrated for his legal knowledge; he is said to be one of the first classics in America, and certainly possesses a very strong and enlightened understanding.

As an Orator in my opinion, there is nothing in him that warrants the high reputation which he has for public speaking. There is something in the tone of his voice not pleasing to the Ear,—but he is eloquent and clear,—always abounding with information and instruction. He was once employed as an Agent for the State of Connecticut to state her claims to certain landed territory before the British House of Commons; this Office he discharged with so much dignity, and made such an ingenious display of his powers, that he laid the foundation of a reputation which will probably last much longer than his own life. Dr. Johnson is about sixty years of age, possesses the manners of a Gentleman, and engages the Hearts of Men by the sweetness of his temper, and that affectionate style of address with which he accosts his acquaintance.

Mr. Sherman exhibits the oddest shaped character I ever remember to have met with. He is awkward, un-meaning, and unaccountably strange in his manner. But in his train of thinking there is something regular, deep, and comprehensive; yet the oddity of his address, the vulgarisms that accompany his public speaking, and that strange new England cant which runs through his public as well as his private speaking make everything that is connected with him grotesque and laughable;—and yet he deserves infinite praise,—no Man has a better Heart or a clearer Head. If he cannot embellish he can furnish thoughts that are wise and useful. He is an able politician, and extremely artful in accomplishing any particular object;—it is remarked that he seldom fails. I am told he sits on the Bench in Connecticut, and is very correct in the discharge of his Judicial functions. In the early part of his life he was a Shoe-maker;—but despising the lowness of his condition, he turned Almanack maker, and so progressed upwards to a Judge. He has been several years a Member of Congress, and discharged the duties of his Office with honor and credit to himself, and advantage to the State he represented. He is about 60.

Mr. Elsworth is a Judge of the Supreme Court in Connecticut; —he is a Gentleman of a clear, deep, and copious understanding; eloquent, and connected in public debate; and always attentive to his duty. He is very happy in a reply, and choice in selecting such parts of his adversary's arguments as he finds makes the strongest impressions,—in order to take off the force of them, so as to admit the power of his own. Mr. Elsworth is about 37 years of age, a Man much respected for his integrity, and venerated for his abilities.

From New York.

Alexander Hamilton, Yates, and W. Lansing[8] Esquires.

Colo. Hamilton is deservedly celebrated for his talents. He is a practitioner of the Law, and reputed to be a finished Scholar. To a clear and strong judgment he unites the ornaments of fancy, and whilst he is able, convincing, and engaging in his eloquence the Heart and Head sympathize in approving him. Yet there is something too feeble in his voice to be equal to the strains of oratory;—it is my opinion that he is rather a convincing Speaker, that [than] a blazing Orator. Colo. Hamilton requires time to think,—he enquires into every part of his subject with the searching of phylosophy, and when he comes forward he comes highly charged with interesting matter, there is no skimming over the surface of a subject with him, he must sink to the bottom to see what foundation it rests on.—His language is not always equal, sometimes didactic like Bolingbroke's, at others light and tripping like Stern's. His eloquence is not so defusive as to trifle with the senses, but he rambles just enough to strike and keep up the attention. He is about 33 years old, of small stature, and lean. His manners are tinctured with stiffness, and sometimes with a degree of vanity that is highly disagreable.

Mr. Yates is said to be an able Judge. He is a Man of great legal abilities, but not distinguished as an Orator. Some of his Enemies say he is an anti-federal Man, but I discovered no such disposition in him. He is about 45 years old, and enjoys a great share of health.

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[8] *John* Lansing.

Mr. Lansing is a practicing Attorney at Albany, and Mayor of that Corporation. He has a hisitation in his speech, that will prevent his being an Orator of any eminence;—his legal knowledge I am told is not extensive, nor his education a good one. He is however a Man of good sense, plain in his manners, and sincere in his friendships. He is about 32 years of age.

From New Jersey.[4]

Wm. Livingston, David Brearly, Wm. Patterson, and Jonn. Dayton, Esquires.

Governor Livingston is confessedly a Man of the first rate talents, but he appears to me rather to indulge a sportiveness of wit, than a strength of thinking. He is however equal to anything, from the extensiveness of his education and genius. His writings teem with satyr and a neatness of style. But he is no Orator, and seems little acquainted with the guiles of policy. He is about 60 years old, and remarkably healthy.

Mr. Brearly is a man of good, rather than of brilliant parts. He is a Judge of the Supreme Court of New Jersey, and is very much in the esteem of the people. As an Orator he has little to boast of, but as a Man he has every virtue to recommend him. Mr. Brearly is about 40 years of age.

Mr. Patterson is one of those kind of Men whose powers break in upon you, and create wonder and astonishment. He is a Man of great modesty, with looks that bespeak talents of no great extent,—but he is a Classic, a Lawyer, and an Orator;—and of a disposition so favorable to his advancement that every one seemed ready to exalt him with their praises. He is very happy in the choice of time and manner of engaging in a debate, and never speaks but when he understands his subject well. This Gentleman is about 34 ys. of age, of a very low stature.

Capt. Dayton is a young Gentleman of talents, with ambition to exert them. He possesses a good education and some reading; he speaks well, and seems desirous of improving himself in Oratory. There is an impetuosity in his temper that is injurious to him; but there is an honest rectitude about him that makes him

[4] W. C. Houston omitted.

a valuable Member of Society, and secures to him the esteem of all good Men. He is about 30 years old, served with me as a Brother Aid to General Sullivan in the Western expedition of '79.

From Pennsylvania.

Benja. Franklin, Thos. Mifflin, Robt. Morris, Geo. Clymer, Thomas Fitzsimons, Jared Ingersol, James Wilson, Governeur Morris.

Dr. Franklin is well known to be the greatest phylosopher of the present age;—all the operations of nature he seems to understand,—the very heavens obey him, and the Clouds yield up their Lightning to be imprisoned in his rod. But what claim he has to the politician, posterity must determine. It is certain that he does not shine much in public Council,—he is no Speaker, nor does he seem to let politics engage his attention. He is, however, a most extraordinary Man, and tells a story in a style more engaging than anything I ever heard. Let his Biographer finish his character. He is 82 years old, and possesses an activity of mind equal to a youth of 25 years of age.

General Mifflin is well known for the activity of his mind, and the brilliancy of his parts. He is well informed and a graceful Speaker. The General is about 40 years of age, and a very handsome man.

Robert Morris is a merchant of great eminence and wealth; an able Financier, and a worthy Patriot. He has an understanding equal to any public object, and possesses an energy of mind that few Men can boast of. Although he is not learned, yet he is as great as those who are. I am told that when he speaks in the Assembly of Pennsylvania, that he bears down all before him. What could have been his reason for not Speaking in the Convention I know not,—but he never once spoke on any point. This Gentleman is about 50 years old.

Mr. Clymer is a lawyer of some abilities;—he is a respectable Man, and much esteemed. Mr. Clymer is about 40 years old.

Mr. Fitzsimons is a Merchant of considerable talents, and speaks very well I am told, in the Legislature of Pennsylvania. He is about 40 years old.

Mr. Ingersol is a very able Attorney, and possesses a clear legal understanding. He is well educated in the Classic's, and is a Man of very extensive reading. Mr. Ingersol speaks well, and comprehends his subject fully. There is a modesty in his character that keeps him back. He is about 36 years old.

Mr. Wilson ranks among the foremost in legal and political knowledge. He has joined to a fine genius all that can set him off and show him to advantage. He is well acquainted with Man, and understands all the passions that influence him. Government seems to have been his peculiar Study, all the political institutions of the World he knows in detail, and can trace the causes and effects of every revolution from the earliest stages of the Grecian commonwealth down to the present time. No man is more clear, copious, and comprehensive than Mr. Wilson, yet he is no great Orator. He draws the attention not by the charm of his eloquence, but by the force of his reasoning. He is about 45 years old.

Mr. Governeur[5] Morris is one of those Genius's in whom every species of talents combine to render him conspicuous and flourishing in public debate:—He winds through all the mazes of rhetoric, and throws around him such a glare that he charms, captivates, and leads away the senses of all who hear him. With an infinite streach of fancy he brings to view things when he is engaged in deep argumentation, that render all the labor of reasoning easy and pleasing. But with all these powers he is fickle and inconstant,—never pursuing one train of thinking,—nor ever regular. He has gone through a very extensive course of reading, and is acquainted with all the sciences. No Man has more wit,—nor can any one engage the attention more than Mr. Morris. He was bred to the Law, but I am told he disliked the profession, and turned Merchant. He is engaged in some great mercantile matters with his namesake Mr. Robt. Morris. This Gentleman is about 38 years old, he has been unfortunate in losing one of his Legs, and getting all the flesh taken off his right arm by a scald, when a youth.

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[5] [Gouverneur.]

From Delaware.

Jno. Dickinson, Gunning Bedford, Geo: Read, Richd. Bassett, and Jacob Broom Esquires.

Mr. Dickinson has been famed through all America, for his Farmers Letters; he is a Scholar, and said to be a Man of very extensive information. When I saw him in the Convention I was induced to pay the greatest attention to him whenever he spoke. I had often heard that he was a great Orator, but I found him an indifferent Speaker. With an affected air of Wisdom he labors to produce a trifle,—his language is irregular and incorrect,—his flourishes, (for he sometimes attempts them), are like expiring flames, they just shew themselves and go out;—no traces of them are left on the mind to chear or animate it. He is, however, a good writer and will be ever considered one of the most important characters in the United States. He is about 55 years old, and was bred a Quaker.

Mr. Bedford was educated for the Bar, and in his profession I am told, has merit. He is a bold and nervous Speaker, and has a very commanding and striking manner;—but he is warm and impetuous in his temper, and precipitate in his judgment. Mr. Bedford is about 32 years old, and very corpulant.

Mr. Read is a Lawyer and a Judge;—his legal abilities are said to be very great, but his powers of Oratory are fatiguing and tiresome to the last degree;—his voice is feeble, and his articulation so bad that few can have patience to attend to him. He is a very good Man, and bears an amiable character with those who know him. Mr. Read is about 50, of a low stature, and a weak constitution.

Mr. Bassett is a religious enthusiast, lately turned Methodist, and serves his Country because it is the will of the people that he should do so. He is a Man of plain sense, and has modesty enough to hold his Tongue. He is a Gentlemanly Man, and is in high estimation among the Methodists. Mr. Bassett is about 36 years old.

Mr. Broom is a plain good Man, with some abilities, but nothing to render him conspicuous. He is silent in public, but chearful and conversable in private. He is about 35 years old.

From Maryland.[6]

Luther Martin, Jas. McHenry, Daniel of St. Thomas Jenifer, and Daniel Carrol Esquires.

Mr. Martin was educated for the Bar, and is Attorney general for the State of Maryland. This Gentleman possesses a good deal of information, but he has a very bad delivery, and so extremely prolix, that he never speaks without tiring the patience of all who hear him. He is about 34 years of age.

Mr. McHenry was bred a physician, but he afterwards turned Soldier and acted as Aid to Genl. Washington and the Marquis de la Fayette. He is a Man of specious talents, with nothing of genious to improve them. As a politician there is nothing remarkable in him, nor has he any of the graces of the Orator. He is however, a very respectable young Gentleman, and deserves the honor which his Country has bestowed on him. Mr. McHenry is about 32 years of age.

Mr. Jenifer is a Gentleman of fortune in Maryland;—he is always in good humour, and never fails to make his company pleased with him. He sits silent in the Senate, and seems to be conscious that he is no politician. From his long continuance in single life, no doubt but he has made the vow of celibacy. He speaks warmly of the Ladies notwithstanding. Mr. Jenifer is about 55 years of Age, and once served as an Aid de Camp to Major Genl. Lee.

Mr. Carrol is a Man of large fortune, and influence in his State. He possesses plain good sense, and is in the full confidence of his Countrymen. This Gentleman is about  years of age.

From Virginia.

Genl. Geo: Washington, Geo: Wythe, Geo: Mason, Jas. Madison junr. Jno. Blair, Edmd. Randolph, and James McLurg.[7]

Genl. Washington is well known as the Commander in chief of the late American Army. Having conducted these States to independence and peace, he now appears to assist in framing a Government to make the People happy. Like Gustavus Vasa,

[6] James Francis Mercer omitted.

[7] McClurg.

he may be said to be the deliverer of his Country;—like Peter the great he appears as the politician and the States-man; and like Cincinnatus he returned to his farm perfectly contented with being only a plain Citizen, after enjoying the highest honor of the Confederacy,—and now only seeks for the approbation of his Countrymen by being virtuous and useful. The General was conducted to the Chair as President of the Convention by the unanimous voice of its Members. He is in the 52d. year of his age.

Mr. Wythe is the famous Professor of Law at the University of William and Mary. He is confessedly one of the most learned legal Characters of the present age. From his close attention to the study of general learning he has acquired a compleat knowledge of the dead languages and all the sciences. He is remarked for his examplary life, and universally esteemed for his good principles. No Man it is said understands the history of Government better than Mr. Wythe,—nor any one who understands the fluctuating condition to which all societies are liable better than he does, yet from his too favorable opinion of Men, he is no great politician. He is a neat and pleasing Speaker, and a most correct and able Writer. Mr. Wythe is about 55 years of age.

Mr. Mason is a Gentleman of remarkable strong powers, and possesses a clear and copious understanding. He is able and convincing in debate, steady and firm in his principles, and undoubtedly one of the best politicians in America. Mr. Mason is about 60 years old, with a fine strong constitution.

Mr. Maddison is a character who has long been in public life; and what is very remarkable every Person seems to acknowledge his greatness. He blends together the profound politician, with the Scholar. In the management of every great question he evidently took the lead in the Convention, and tho' he cannot be called an Orator, he is a most agreable, eloquent, and convincing Speaker. From a spirit of industry and application which he possesses in a most eminent degree, he always comes forward the best informed Man of any point in debate. The affairs of the United States, he perhaps, has the most correct knowledge of,

of any Man in the Union. He has been twice a Member of Congress, and was always thought one of the ablest Members that ever sat in that Council. Mr. Maddison is about 37 years of age, a Gentleman of great modesty,—with a remarkable sweet temper. He is easy and unreserved among his acquaintance, and has a most agreable style of conversation.

Mr. Blair is one of the most respectable Men in Virginia, both on account of his Family as well as fortune. He is one of the Judges of the Supreme Court in Virginia, and acknowledged to have a very extensive knowledge of the Laws. Mr. Blair is however, no Orator, but his good sense, and most excellent principles, compensate for other deficiencies. He is about 50 years of age.

Mr. Randolph is Governor of Virginia,—a young Gentleman in whom unite all the accomplishments of the Scholar, and the Statesman. He came forward with the postulata, or first principles, on which the Convention acted, and he supported them with a force of eloquence and reasoning that did him great honor. He has a most harmonious voice, a fine person and striking manners.

Mr. Randolph is about 32 years of age.

Mr. McLurg is a learned physician, but having never appeared before in public life his character as a politician is not sufficiently known. He attempted once or twice to speak, but with no great success. It is certain that he has a foundation of learning, on which, if he pleases, he may erect a character of high renown. The Doctor is about 38 years of age, a Gentleman of great respectability, and of a fair and unblemished character.

North Carolina.

Wm. Blount, Richd. Dobbs Spaight, Hugh Williamson, Wm. Davey, and Jno. Martin [8] Esquires.

Mr. Blount is a character strongly marked for integrity and honor. He has been twice a Member of Congress, and in that office discharged his duty with ability and faithfulness. He is no

[8] *Alexander* Martin.

Speaker, nor does he possess any of those talents that make Men shine;—he is plain, honest, and sincere. Mr. Blount is about 36 years of age.

Mr. Spaight is a worthy Man, of some abilities, and fortune. Without possessing a Genius to render him brilliant, he is able to discharge any public trust that his Country may repose in him. He is about 31 years of age.

Mr. Williamson is a Gentleman of education and talents. He enters freely into public debate from his close attention to most subjects, but he is no Orator. There is a great degree of good humour and pleasantry in his character; and in his manners there is a strong trait of the Gentleman. He is about 48 years of age.

Mr. Davey is a Lawyer of some eminence in his State. He is said to have a good classical education, and is a Gentleman of considerable literary talents. He was silent in the Convention, but his opinion was always respected. Mr. Davy is about 30 years of age.

Mr. Martin was lately Governor of North Carolina, which office he filled with credit. He is a Man of sense, and undoubtedly is a good politician, but he is not formed to shine in public debate, being no Speaker. Mr. Martin was once a Colonel in the American Army, but proved unfit for the field. He is about 40 years of age.

South Carolina.

Jno. Rutledge, Chs. Cotesworth Pinckney, Charles Pinckney, and Pierce Butler Esquires.

Mr. Rutledge is one of those characters who was highly mounted at the commencement of the late revolution;—his reputation in the first Congress gave him a distinguished rank among the American Worthies. He was bred to the Law, and now acts as one of the Chancellors of South Carolina. This Gentleman is much famed in his own State as an Orator, but in my opinion he is too rapid in his public speaking to be denominated an agreeable Orator. He is undoubtedly a man of abilities, and a Gentleman of distinction and fortune. Mr. Rutledge was once Governor of South Carolina. He is about 48 years of age.

Mr. Chs. Cotesworth Pinckney is a Gentleman of Family and fortune in his own State. He has received the advantage of a liberal education, and possesses a very extensive degree of legal knowledge. When warm in a debate he sometimes speaks well, —but he is generally considered an indifferent Orator. Mr. Pinckney was an Officer of high rank in the American Army, and served with great reputation through the War. He is now about 40 years of age.

Mr. Charles Pinckney is a young Gentleman of the most promising talents. He is, altho' only 24 ys. of age, in possession of a very great variety of knowledge. Government, Law, History and Phylosophy are his favorite studies, but he is intimately acquainted with every species of polite learning, and has a spirit of application and industry beyond most men. He speaks with great neatness and perspicuity, and treats every subject as fully, without running into prolixity, as it requires. He has been a member of Congress, and served in that Body with ability and eclat.

Mr. Butler is a character much respected for the many excellent virtues which he possesses. But as a politician or an Orator, he has no pretentions to either. He is a Gentleman of fortune, and takes rank among the first in South Carolina. He has been appointed to Congress, and is now a Member of the Legislature of South Carolina. Mr. Butler is about 40 years of age; an Irishman by birth.

For Georgia.

Wm. Few, Abraham Baldwin, Wm. Pierce, and Wm. Houstoun Esqrs.

Mr. Few possesses a strong natural Genius, and from application has acquired some knowledge of legal matters;—he practises at the bar of Georgia, and speaks tolerably well in the Legislature. He has been twice a Member of Congress, and served in that capacity with fidelity to his State, and honor to himself. Mr. Few is about 35 years of age.

Mr. Baldwin is a Gentleman of superior abilities, and joins in a public debate with great art and eloquence. Having laid the foundation of a compleat classical education at Harvard Col-

lege, he pursues every other study with ease. He is well acquainted with Books and Characters, and has an accomodating turn of mind, which enables him to gain the confidence of Men, and to understand them. He is a practising Attorney in Georgia, and has been twice a Member of Congress. Mr. Baldwin is about 38 years of age.

Mr. Houstoun is an Attorney at Law, and has been Member of Congress for the State of Georgia. He is a Gentleman of Family, and was educated in England. As to his legal or political knowledge he has very little to boast of. Nature seems to have done more for his corporeal than mental powers. His Person is striking, but his mind very little improved with useful or elegant knowledge. He has none of the talents requisite for the Orator, but in public debate is confused and irregular. Mr. Houstoun is about 30 years of age of an amiable and sweet temper, and of good and honorable principles.

My own character I shall not attempt to draw, but leave those who may choose to speculate on it, to consider it in any light that their fancy or imagination may depict. I am conscious of having discharged my duty as a Soldier through the course of the late revolution with honor and propriety; and my services in Congress and the Convention were bestowed with the best intention towards the interest of Georgia, and towards the general welfare of the Confederacy. I possess ambition, and it was that, and the flattering opinion which some of my Friends had of me, that gave me a seat in the wisest Council in the World, and furnished me with an opportunity of giving these short Sketches of the Characters who composed it.

## Quorum, Officers and Rules of the Assembled Convention

[The documentary reproductions given under this heading are taken from Madison's Notes. Delegates in Philadelphia from large states awaiting the presence of a quorum seriously proposed the denial of equal voting power to states represented in the Convention, urging instead a population basis. This movement was wisely discountenanced by the Virginia delegation,

because it threatened dangerous bickering at the very beginning of the Convention's session, and so it was tacitly agreed that a quorum should consist of a majority of states represented, each to have one vote. The processes of organizing the Convention and adopting rules of procedure are clearly shown by the extracts printed below.]

QUORUM

MONDAY, MAY 14TH, 1787.

Was the day fixed for the meeting of the Deputies in Convention, for revising the federal system of government. On that day a small number only had assembled. Seven States were not convened till,

FRIDAY, MAY 25TH.

When the following members appeared:

| From | |
|---|---|
| Massachusetts, | Rufus King. |
| New York, | Robert Yates, and<br>Alexander Hamilton. |
| New Jersey, | David Brearl[e]y,<br>William Churchill Houston, and<br>William Patterson [Paterson]. |
| Pennsylvania, | Robert Morris,<br>Thomas Fitzsimons,<br>James Wilson, and<br>Gouverneur Morris. |
| Delaware, | George Read,<br>Richard Basset[t], and<br>Jacob Broom. |
| Virginia, | George Washington,<br>Edmund Randolph,<br>John Blair,<br>James Madison,<br>George Mason<br>George Wythe, and<br>James McClurg. |

| | |
|---|---|
| North Carolina, | Alexander Martin,<br>William Richardson Davie,<br>Richard Dobbs Spaight, and<br>Hugh Williamson. |
| South Carolina, | John Rutledge,<br>Charles Cotesworth Pinckney,<br>Charles Pinckney, and<br>Pierce Butler. |
| Georgia, | William Few. |

OFFICERS OF THE CONVENTION

*May 25* Robert Morris: Informed the members assembled, that, by the instruction and in behalf of the deputation of Pennsylvania, he proposed George Washington, Esquire, late Commander-in-Chief, for President of the Convention.

John Rutledge: Seconded the motion, expressing his confidence that the choice would be unanimous; and observing, that the presence of General Washington forbade any observations on the occasion which might otherwise be proper.

General Washington was accordingly unanimously elected by ballot, and conducted to the Chair by Mr. R. Morris and Mr. Rutledge; from which, in a very emphatic manner, he thanked the Convention for the honor they had conferred on him; reminded them of the novelty of the scene of business in which he was to act, lamented his want of better qualifications, and claimed the indulgence of the House towards the involuntary errors which his inexperience might occasion.

Wilson: Moved that a Secretary be appointed, and nominated Mr. Temple Franklin.

Hamilton: Nominated Major Jackson.

On the ballot Major Jackson had five votes, and Mr. Franklin two votes.

RULES OF THE CONVENTION

*May 25* The appointment of a Committee, on the motion of Mr. C. Pinckney, consisting of Messrs. Wythe, Hamilton, and C.

Pinckney, to prepare standing rules and orders, was the only remaining step taken on this day.

Wythe: From the Committee for preparing rules, made a report, which employed the deliberations of this day. *May 28*

King: Objected to one of the rules in the report authorizing any member to call for the Yeas and Nays and have them entered on the minutes. He urged that as the acts of the Convention were not to bind the constituents, it was unnecessary to exhibit this evidence of the votes; and improper, as changes of opinion would be frequent in the course of the business, and would fill the minutes with contradictions.

Mason: Seconded the objection, adding that such a record of the opinions of members would be an obstacle to a change of them on conviction; and in case of its being hereafter promulged, must furnish handles to the adversaries of the result of the meeting.

The proposed rule was rejected, *nem. con.* The standing rules agreed to were as follows:

A House to do business shall consist of the Deputies of not less than seven States; and all questions shall be decided by the greater number of these which shall be fully represented. But a less number than seven may adjourn from day to day.

Immediately after the President shall have taken the Chair, and the members their seats, the minutes of the preceding day shall be read by the Secretary.

Every member, rising to speak, shall address the President; and, whilst he shall be speaking, none shall pass between them, or hold discourse with another, or read a book, pamphlet, or paper, printed or manuscript. And of two members rising to speak at the same time, the President shall name him who shall be first heard.

A member shall not speak oftener than twice, without special leave, upon the same question; and not the second time, before every other who had been silent shall have been heard, if he choose to speak upon the subject.

A motion, made and seconded, shall be repeated, and, if

written, as it shall be when any member shall so require, read aloud, by the Secretary, before it shall be debated; and may be withdrawn at any time before the vote upon it shall have been declared.

Orders of the day shall be read next after the minutes; and either discussed or postponed, before any other business shall be introduced.

When a debate shall arise upon a question, no motion, other than to amend the question, to commit it, or to postpone the debate, shall be received.

A question which is complicated shall, at the request of any member, be divided, and put separately upon the propositions of which it is compounded.

The determination of a question, although fully debated, shall be postponed, if the Deputies of any State desire it, until the next day.

A writing which contains any matter brought on to be considered shall be read once throughout, for information; then by paragraphs, to be debated; and again, with the amendments, if any, made on the second reading; and afterwards the question shall be put upon the whole, amended, or approved in its original form, as the case shall be.

Committees shall be appointed by ballot; and the members who have the greatest number of ballots, although not a majority of the votes present, shall be the Committee. When two or more members have an equal number of votes, the member standing first on the list, in the order of taking down the ballots, shall be preferred.

A member may be called to order by any other member, as well as by the President; and may be allowed to explain his conduct, or expressions supposed to be reprehensible. And all questions of order shall be decided by the President, without appeal or debate.

Upon a question to adjourn, for the day, which may be made at any time, if it be seconded, the question shall be put without a debate.

When the House shall adjourn, every member shall stand in his place until the President pass him.[9]

Butler: Moved that the House provide against interruption of business by absence of members, and against licentious publications of their proceedings.

Spaight: Added a motion to provide that, on the one hand, the House might not be precluded by a vote upon any question from revising the subject matter of it, when they see cause, nor, on the other hand, be led too hastily to rescind a decision which was the result of mature discussion. Whereupon it was ordered that these motions be referred for the consideration of the Committee appointed to draw up the standing rules, and that the Committee make report thereon.

The following rules were added, on the report of Mr. Wythe, from the Committee: *May 29*

That no member be absent from the House, so as to interrupt the representation of the State, without leave.

That committees do not sit whilst the House shall be, or ought to be, sitting.

That no copy be taken of any entry on the Journal during the sitting of the House, without leave of the House.

That members only be permitted to inspect the Journal.

That nothing spoken in the House be printed, or otherwise published, or communicated without leave.

That a motion to reconsider a matter which has been de-

[9] Previous to the arrival of a majority of the States, the rule by which they ought to vote in the Convention had been made a subject of conversation among the members present. It was pressed by Gouverneur Morris, and favored by Robert Morris and others from Pennsylvania, that the large states should unite in firmly refusing to the small States an equal vote, as unreasonable, and as enabling the small states to negative every good system of government, which must, in the nature of things, be founded on a violation of that equality. The members from Virginia, conceiving that such an attempt might beget fatal altercations between the large and small states; and that it would be easier to prevail on the latter in the course of the deliberations to give up their equality for the sake of an effective government, than on taking the field of discussion to disarm themselves of the right and thereby throw themselves on the mercy of the larger states, discountenanced and stifled the project.

termined by a majority, may be made, with leave, unanimously given, on the same day on which the vote passed; but otherwise, not without one day's previous notice; in which last case, if the House agree to the reconsideration, some future day shall be assigned for that purpose.

### Committees of the Convention

[Insertion by Compiler]

The novelty of the situation confronting the Convention, the differences among delegates relative to the scope of authority they possessed, the absence of structural models for an adequate federal union, and above all the widespread provincialism of the times, made agreement on a prearranged committee system difficult, if not impossible. The rules therefore prescribed the method of choosing committee members, leaving to needs arising in the process of deliberation occasion for their creation. This simple, flexible policy was admirably suited to the exigencies of procedure, and enabled the Convention, a small, hard working body, to dominate drafting activities in all stages of development.

For the preparation of a plan to be submitted when the Convention was organized and ready for work the Virginia delegation assumed responsibility, prompted by the lead their state had taken in the movement for a stronger union, by the fruitful thinking of outstanding members, and by the delay in the appearance of a quorum at Philadelphia which permitted them to meet daily in the interim for two or three hours. The result was the Virginia plan, a well-thought-out federal system despite its retention of objectionable features taken from the Articles of Confederation. This plan was submitted to the Convention by Governor Randolph on May 29, and engaged its continuous attention in Committee of the Whole until June 13.

By this time the steady trend towards well differentiated national institutions with greatly expanded powers aroused growing dissatisfaction among champions of state sovereignty, and gave rise to a movement led by Paterson of New Jersey to sub-

stitute for the Virginia plan one adhering closely to the provisions of the Articles of Confederation. This proposed substitute came before the Convention on June 15, and presented squarely to its members the alternatives of continuing the existing Confederation resting on the foundation of state sovereignty, with added organs and a modest enlargement of powers, or a new federal system with organs and powers rooted in the whole people and operating on individuals. Thus the delegates from Virginia and the supporters of the Paterson movement functioned as improvised committees for the drafting of competing schemes of government considered in convention.

The first Convention committee that was used in the deliberations at Philadelphia was, naturally, the Committee of the Whole, that historic legislative contrivance for effective consideration of a complicated scheme by all members of a deliberative body informally. That committee devoted two busy weeks to the exclusive consideration of the Virginia plan, and debated for three days the proposition to make the New Jersey plan the basis of future developments. The result of these deliberations in Committee of the Whole was adherence to the Virginia plan by a vote of 7 to 3, with Maryland divided—a decision which subsequent efforts in convention failed to reverse or impair.

For harmonizing differences that occurred in the discussion of questions before the Convention, special committees were elected from time to time as the need for them arose. When the problem under consideration affected the states as such, as well as the general government, it was referred to a committee composed of a delegate from each state represented at Philadelphia. These committees were called committees of states, or grand committees, and were used effectively for working out a compromise on representation in the Senate, a solution of the problem of allotting legislators, drafting a satisfactory provision relative to the militia, the delicate question of the slave trade and navigation acts, and, finally, supplying omitted provisions as the Convention neared the end of its session. It was rare for controversial questions to be referred to a committee with fewer members than one from each state, but that was done on July 6, when

the first committee on the allotment of legislators was created in convention.

On July 24 the famous Committee of Detail was elected to arrange systematically fundamentals which the Convention had evolved from the Virginia plan, and to supplement the resolutions referred to it with a cementing material needed to produce a symmetrical whole. The personnel of this committee was impressive proof of the Convention's capacity to select for difficult tasks men specially qualified for the job assigned to them. Rutledge, the chairman, was as broadminded a representative of states' rights as the Convention contained; Randolph had submitted and explained the Virginia plan and had taken a leading part in the discussions preceding the appointment of the Committee of Detail; Gorham had served as president of the Congress of the Confederation, was chairman of the Convention's Committee of the Whole, and brought to Philadelphia a national perspective of the problems of the times; Ellsworth, the clear-headed delegate from Connecticut, proved in convention and subsequently that he was one of the constructive leaders of his day; Wilson commands our admiration with his clarifying exposition of principles of political science, with his persuasive advocacy of essentials of popular government, with his prophetic grasp of factors that he championed before the country was ready for them. In ten days this committee brought before the Convention a report that was in many respects the most important stage in the development of the Constitution. (See Chapter 3 for the report.)

On September 8 the Convention had carried its elaboration of the draft submitted by the Committee of Detail far enough to prepare for the style and final arrangement of the Constitution. It accordingly elected a committee of five "to revise the style of and arrange the articles which had been agreed to by the house," composed of Johnson, chairman, Hamilton, Gouverneur Morris, Madison, and King. With less latitude than the Committee of Detail, and, therefore, having less power over substantive provisions of the Constitution, this able Committee on Style and Arrangement nevertheless gave to that document its most en-

during qualities—its conciseness, its adaptability, its flexibility, and withal its stability. Scholars have found reason for crediting Gouverneur Morris with the preparation of the report which gave to the completed Constitution its remarkable clarity and terseness of phraseology.

CHAPTER 2

# PLANS SUBMITTED TO THE FEDERAL CONVENTION

[Differences among delegates at Philadelphia about principles that should determine the character of "a more perfect Union," and about the authority of the Convention to go beyond mere amendment of the Articles of Confederation, made the consideration of at least two plans for a government "adequate to the preservation and support of the Union" inevitable. The circumstances that prompted the preparation of these two plans are described in Chapter 1, *supra,* under the caption "Committees of the Convention." The Virginia plan and the New Jersey plan printed below from the texts contained in Hunt and Scott's *Debates in the Federal Convention of 1787, Reported by James Madison* presented these competing views to the makers of our Constitution. Two other plans, one submitted by Charles Pinckney on May 29, the other by Alexander Hamilton on June 18, came before the Convention, but never received consideration as basic propositions.]

## The Virginia Plan

*May 29* Randolph: Then opened the main business. He expressed his regret that it should fall to him rather than those who were of longer standing in life and political experience to open the great subject of their mission. But, as the Convention had originated from Virginia, and his colleagues supposed that some proposition was expected from them, they had imposed this task on him.

He then commented on the difficulty of the crisis, and the necessity of preventing the fulfilment of the prophecies of the American downfall.

He observed that in revising the federal system we ought to inquire, first, into the properties which such a government ought to possess; second, the defects of the Confederation; third, the danger of our situation; and fourth, the remedy.

1. The character of such a government ought to secure, first, against foreign invasion; second, against dissentions between members of the Union, or seditions in particular states; third, to procure to the several states, various blessings of which an isolated situation was incapable; fourth, to be able to defend itself against encroachment; and fifth, to be paramount to the state constitutions.

2. In speaking of the defects of the Confederation, he professed a high respect for its authors, and considered them as having done all that patriots could do in the then infancy of the science of constitutions and of confederacies—when the inefficiency of requisitions was unknown; no commercial discord had arisen among any states; no rebellion had appeared as in Massachusetts; foreign debts had not become urgent; the havoc of paper money had not been foreseen; treaties had not been violated—and perhaps nothing better could be obtained from the jealousy of the states with regard to their sovereignty.

He then proceeded to enumerate the defects: First, that the Confederation produced no security against foreign invasion, Congress not being permitted to prevent a war nor to support it by their own authority. Of this he cited many examples, most of which tended to show that they could not cause infractions of treaties or of the law of nations to be punished; that particular states might by their conduct provoke war without control; and that neither militia nor drafts being fit for defense on such occasions, enlistments only could be successful, and these could not be executed without money.

Second, that the federal government could not check the quarrels between states, nor a rebellion in any, not having

constitutional power nor means to interpose according to the exigency.

Third, that there were many advantages which the United States might acquire, which were not attainable under the Confederation—such as a productive impost, counteraction of the commercial regulations of other nations, pushing of commerce *ad libitum,* etc., etc.

Fourth, that the federal government could not defend itself against encroachments from the states.

Fifth, that it was not even paramount to the state constitutions, ratified as it was in many of the states.

3. He next reviewed the danger of our situation and appealed to the sense of the best friends of the United States, the prospect of anarchy from the laxity of government everywhere, and to other considerations.

4. He then proceeded to the remedy, the basis of which he said must be the republican principle.

He proposed as conformable to his ideas the following resolutions, which he explained one by one.

1. Resolved, that the Articles of Confederation ought to be so corrected and enlarged as to accomplish the objects proposed by their institution; namely, "common defense, security of liberty and general welfare."

2. Resolved, therefore, that the rights of suffrage in the national legislature ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases.

3. Resolved, that the national legislature ought to consist of two branches.

4. Resolved, that the members of the first branch of the national legislature ought to be elected by the people of the several states every ——— for the term of ———; to be of the age of ——— years at least, to receive liberal stipends by which they may be compensated for the devotion of their time to the public service; to be ineligible to any office established by a particular state, or under the authority of the United States, except those peculiarly belonging to the functions of

the first branch, during the term of service, and for the space of ——— after its expiration; to be incapable of re-election for the space of ——— after the expiration of their term of service, and to be subject to recall.

5. Resolved, that the members of the second branch of the national legislature ought to be elected by those of the first, out of a proper number of persons nominated by the individual legislatures, to be of the age of ——— years at least; to hold their offices for a term sufficient to ensure their independence; to receive liberal stipends, by which they may be compensated for the devotion of their time to the public service; and to be ineligible to any office established by a particular state, or under the authority of the United States, except those peculiarly belonging to the functions of the second branch, during the term of service, and for the space of ——— after the expiration thereof.

6. Resolved, that each branch ought to possess the right of originating acts; that the national legislature ought to be empowered to enjoy the legislative rights vested in Congress by the Confederation, and moreover to legislate in all cases to which the separate states are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation; to negative all laws passed by the several states, contravening in the opinion of the national legislature the Articles of Union or any treaty subsisting under the authority of the Union; and to call forth the force of the Union against any member of the Union failing to fulfill its duty under the Articles thereof.

7. Resolved, that a national executive be instituted; to be chosen by the national legislature for the term of ——— years, to receive punctually at stated times a fixed compensation for the services rendered, in which no increase nor diminution shall be made so as to affect the magistracy existing at the time of increase or diminution, and to be ineligible a second time; and that besides a general authority to execute the national laws, it ought to enjoy the executive rights vested in Congress by the Confederation.

8. Resolved, that the executive and a convenient number of the national judiciary ought to compose a council of revision with authority to examine every act of the national legislature before it shall operate, and every act of a particular legislature before a negative thereon shall be final; and that the dissent of the said council shall amount to a rejection, unless the act of the national legislature be again passed, or that of a particular legislature be again negatived by ——— of the members of each branch.

9. Resolved, that a national judiciary be established to consist of one or more supreme tribunals, and of inferior tribunals to be chosen by the national legislature, to hold their offices during good behavior; and to receive punctually at stated times fixed compensation for their services, in which no increase or diminution shall be made so as to affect the persons actually in office at the time of such increase or diminution. That the jurisdiction of the inferior tribunals shall be to hear and determine in the first instance, and of the supreme tribunal to hear and determine in the dernier resort, all piracies and felonies on the high seas, captures from an enemy; cases in which foreigners or citizens of other states applying to such jurisdictions may be interested, or which respect the collection of the national revenue; impeachments of any national officers, and questions which may involve the national peace and harmony.

10. Resolved, that provision ought to be made for the admission of states lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory or otherwise, with the consent of a number of voices in the national legislature less than the whole.

11. Resolved, that a republican government and the territory of each state, except in the instance of a voluntary junction of government and territory, ought to be guaranteed by the United States to each state.

12. Resolved, that provision ought to be made for the continuance of Congress and their authorities and privileges, until a given day after the reform of the Articles of Union shall

be adopted, and for the completion of all their engagements.

13. Resolved, that provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary, and that the assent of the national legislature ought not to be required thereto.

14. Resolved, that the legislative, executive and judiciary powers within the several states ought to be bound by oath to support the Articles of Union.

15. Resolved, that the amendments which shall be offered to the Confederation by the Convention, ought at a proper time, or times, after the approbation of Congress, to be submitted to an assembly or assemblies of representatives, recommended by the several legislatures, to be expressly chosen by the people to consider and decide thereon.

He concluded with an exhortation not to suffer the present opportunity of establishing general peace, harmony, happiness and liberty in the United States to pass away unimproved.[1]

## The New Jersey Plan

Paterson: Observed to the Convention that it was the wish of several deputations, particularly that of New Jersey, that further time might be allowed them to contemplate the plan reported from the Committee of the Whole, and to digest one purely federal, and contra-distinguished from the reported plan. He said they hoped to have such a one ready by tomorrow to be laid before the Convention. The Convention adjourned that leisure might be given for the purpose. *June 14*

Paterson: Laid before the Convention the plan which he said several of the deputations wished to be substituted in place of that proposed by Mr. Randolph. After some little discussion of the most proper mode of giving it a fair deliberation, it was agreed that it should be referred to a Committee of the Whole, and that in order to place the two plans in due comparison, the other should be recommitted. At the earnest re- *June 15*

[1] This abstract of the speech was furnished to James Madison by Mr. Randolph and is in his handwriting.

quest of Mr. Lansing and some other gentlemen, it was also agreed that the Convention should not go into Committee of the Whole on the subject until tomorrow, by which delay the friends of the plan proposed by Mr. Paterson would be better prepared to explain and support it, and all would have an opportunity of taking copies.[2]

The propositions from New Jersey moved by Mr. Paterson were in the words following:

1. Resolved, that the Articles of Confederation ought to be so revised, corrected and enlarged as to render the federal Constitution adequate to the exigencies of government and the preservation of the Union.

2. Resolved, that in addition to the powers vested in the United States in Congress by the present existing Articles of Confederation, they be authorized to pass acts for raising a revenue, by levying a duty or duties on all goods or merchandizes of foreign growth or manufacture, imported into any part of the United States, by stamps on paper, vellum or parchment, and by a postage on all letters or packages passing through the general post office, to be applied to such federal purposes as they shall deem proper and expedient; to make rules and regulations for the collection thereof; and the same from time to time, to alter and amend in such manner as they shall think proper; to pass acts for the regulation of trade and

[2] This plan had been concerted among the deputations, or members thereof, from Connecticut, New York, New Jersey, Delaware, and perhaps Mr. Martin from Maryland who made with them a common cause though on different principles. Connecticut and New York were against a departure from the principle of the Confederation, wishing rather to add a few new powers to Congress than to substitute a national government. The states of New Jersey and Delaware were opposed to a national government because its patrons considered a proportional representation of the states as the basis of it. The eagerness displayed by the members opposed to a national government from these different motives began now to produce serious anxiety for the result of the Convention. Mr. Dickinson said to Mr. Madison: You see the consequence of pushing things too far. Some of the members from the small states wish for two branches in the general legislature, and are friends to a good national government; but we would sooner submit to a foreign power than to submit to be deprived in both branches of the legislature of an equality of suffrage, and thereby be thrown under the domination of the large states.

commerce as well with foreign nations as with each other, provided that all punishments, fines, forfeitures and penalties to be incurred for contravening such acts, rules and regulations shall be adjudged by the common law judiciaries of the state in which any offense contrary to the true intent and meaning of such acts, rules and regulations shall have been committed or perpetrated, with liberty of commencing in the first instance all suits and prosecutions for that purpose in the superior common law judiciary in such state, subject nevertheless for the correction of all errors, both in law and fact in rendering judgment, to an appeal to the judiciary of the United States.

3. Resolved, that whenever requisitions shall be necessary, instead of the rule for making requisitions mentioned in the Articles of Confederation, the United States in Congress be authorized to make such requisitions in proportion to the whole number of white and other free citizens and inhabitants of every age, sex and condition, including those bound to servitude for a term of years, and three-fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes; that if such requisitions be not complied with in the time specified therein, to direct the collection thereof in the non-complying states and for that purpose to devise and pass acts directing and authorizing the same; provided that none of the powers hereby vested in the United States in Congress shall be exercised without the consent of at least ——— states, and in that proportion if the number of confederated states should hereafter be increased or diminished.

4. Resolved, that the United States in Congress be authorized to elect a federal executive to consist of ——— persons, to continue in office for the term of ——— years, to receive punctually at stated times a fixed compensation for their services, in which no increase or diminution shall be made so as to affect the persons composing the executive at the time of such increase or diminution, to be paid out of the federal treasury; to be incapable of holding any other office or ap-

pointment during their time of service and for ——— years thereafter; to be ineligible a second time, and removable by Congress on application by a majority of the executives of the several states; that the executives besides their general authority to execute the federal acts ought to appoint all federal officers not otherwise provided for, and to direct all military operations; provided that none of the persons composing the federal executive shall on any occasion take command of any troops, so as personally to conduct any military enterprise as general or in other capacity.

5. Resolved, that a federal judiciary be established to consist of a supreme tribunal, the judges of which to be appointed by the executive, and to hold their offices during good behavior, to receive punctually at stated times a fixed compensation for their services in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution; that the judiciary so established shall have authority to hear and determine in the first instance on all impeachments of federal officers, and by way of appeal in the dernier resort in all cases touching the rights of ambassadors, in all cases of captures from an enemy, in all cases of piracies and felonies on the high seas, in all cases in which foreigners may be interested, in the construction of any treaty or treaties, or which may arise on any of the acts for the regulation of trade, or the collection of the federal revenue; that none of the judiciary shall during the time they remain in office be capable of receiving or holding any other office or appointment during their term of service, or for ——— thereafter.

6. Resolved, that all acts of the United States in Congress, made by virtue and in pursuance of the powers hereby and by the Articles of Confederation vested in them, and all treaties made and ratified under the authority of the United States shall be the supreme law of the respective states so far forth as those acts or treaties shall relate to the said states or their citizens, and that the judiciary of the several states shall be bound thereby to their decisions, any thing in the respec-

tive laws of the individual states to the contrary notwithstanding; and that if any state, or any body of men in any state shall oppose or prevent the carrying into execution such acts or treaties, the federal executive shall be authorized to call forth the power of the confederated states, or so much thereof as may be necessary to enforce and compel an obedience to such acts, or an observance of such treaties.

7. Resolved, that provision be made for the admission of new states into the Union.

8. Resolved, that the rule for naturalization ought to be the same in every state.

9. Resolved, that a citizen of one state committing an offense in another state of the Union, shall be deemed guilty of the same offense as if it had been committed by a citizen of the state in which the offense was committed.[3]

## The Virginia and New Jersey Plans Compared

[Insertion by Compiler]

To stress the features of the two plans that were urged in Committee of the Whole, a comparison of their principal provisions should be helpful.

The first resolution of each series gives the controlling principle underlying the plan it introduces. Revision, correction and enlargement of the Articles of Confederation so as to render them "adequate to the exigencies of government" measure the scope of the New Jersey improvement processes. In other words, the first resolution of the New Jersey plan retains the principle of *confederation* as the basis of revision. On the other hand, the

[3] This copy of Mr. Paterson's propositions varies in a few clauses from that in the printed journal furnished from the papers of Mr. Brearley, a colleague of Mr. Paterson. A confidence is felt, notwithstanding, in its accuracy. That the copy in the journal is not entirely correct is shown by the ensuing speech of Mr. Wilson (June 16) in which he refers to the mode of removing the executive by impeachment and conviction as a feature in the Virginia plan forming one of its contrasts to that of Mr. Paterson, which proposed a removal on the application of a majority of the executives of the states. In the copy printed in the journal, the two modes are combined in the same clause; whether through inadvertence, or as a contemplated amendment does not appear.

first resolution of the Committee of the Whole (see Chapter 3, *infra*) declares "that a national government ought to be established, consisting of a supreme legislative, executive, and judiciary" [4]—that is to say it prescribes the principle of federation as the guide for future developments of the Constitution. These introductory resolutions epitomize the outstanding differences between the two plans.

The second New Jersey resolution assumes the continuance as a legislative body of the Congress under the Articles of Confederation. Here is where enormous differences between the two plans present themselves. Under the New Jersey plan the legislature of the Union is a unicameral body in which each state has an equal voice expressed by not less than two nor more than seven delegates chosen annually as the legislature of the state shall direct. Under the Virginia plan [5] that legislature is a bicameral organ with the states represented proportionally in each branch. Members of the first branch are elected by the people to serve three years; members of the second branch are chosen by the state legislatures to serve seven years. Congress under the New Jersey plan is an agency of the states; under the Virginia plan it is potentially the national legislative organ of the people.

To the Congress established by the Articles of Confederation the second New Jersey resolution gives primary control of important sources of revenue by empowering it to levy duties on imports, to require stamps on paper, vellum, or parchment, and to prescribe postage for letters and packages sent by mail. The purposes for which revenue is raised must be determined by the Congress. Anticipating the probable inadequacy of these sources of revenue for the needs of a rapidly growing population, the third New Jersey resolution modified the system of requisitions authorized by the Articles of Confederation, basing it on the whole number of white and other free persons of every age or sex, including those bound to service for a term of years, and three-fifths of all other persons except untaxed Indians. To secure compliance with these requisitions, Congress is given the power

[4] See p. 91, infra.

[5] As revised in Committee of the Whole.

to direct the collection of them in non-complying states. In addition to the taxing powers named above, the second New Jersey resolution authorizes Congress to regulate commerce with foreign nations and among the several states. The sixth resolution of the Committee of the Whole is, by comparison with the New Jersey resolution analyzed, vague and indefinite. Starting with the powers of Congress granted by the Articles of Confederation, it supplements these with authority to legislate in all cases to which the separate states are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation. To protect this undefined sphere of legislative power, the national legislature is given the right to negative state laws! Stating the results of this comparison in general terms, the New Jersey resolutions enumerate definite powers which Congress may exercise; the revised Virginia resolution, on the other hand, announces principles which are to determine future delegations of power.

The fourth New Jersey resolution and the ninth revised Virginia resolution have more resemblances than differences. Both create a federal executive elected for a term of years by the legislature; both secure the independence of the executive by requiring a fixed compensation paid out of the general treasury which cannot be changed during the term of the executive; both confer on the executive, power to execute the laws and to make appointments; both make the executive ineligible for a second term. The following differences should be noted: the New Jersey resolution requires a plural executive, the Virginia plan reproduces the typical executive composed of one person; persons forming the executive called for by the New Jersey plan may not hold any other office during their term of service, or for ——— years thereafter; the Virginia plan is silent on this subject; the executives of the New Jersey plan are removable by Congress on the application of a majority of the state executives, whereas the Virginia plan requires conviction in impeachment proceedings for removal; the executives of the New Jersey plan have no share in legislation, that of the Virginia plan possesses the veto power.

To evaluate the judiciaries of the two plans, the fifth and the

last portion of the second New Jersey resolutions should be compared with the eleventh, twelfth, and thirteenth resolutions of the Committee of the Whole. Both plans establish a supreme federal tribunal. The New Jersey plan provides for no inferior federal tribunals, but relies on state courts for the exercise of original jurisdiction subject to appeals to the federal supreme court. The Virginia plan establishes both superior and inferior federal tribunals. In the New Jersey plan, judges are appointed by the executive, in the Virginia plan by the Senate. Both plans provide for tenure of judges during good behavior and salaries beyond the control of the legislature during that tenure. On the subject of jurisdiction the New Jersey resolutions are clearer and fuller than the corresponding provisions of the Virginia plan. It gives the supreme federal tribunal original jurisdiction in all impeachments of federal officers, and appellate jurisdiction in cases affecting ambassadors, in captures from an enemy, in cases in which foreigners are interested; in the construction of treaties, and in cases arising from the regulation of commerce or the collection of revenue. The revised Virginia resolutions extend the jurisdiction of national courts to all cases which relate to the collection of the national revenue, impeachments of any national officers, and questions which involve the national peace and harmony. These vague propositions are hardly enlightening guides to the establishment of the proper province for federal courts.

The sixth New Jersey resolution, forerunner in convention of the famous supremacy and *non obstante* clauses of the completed Constitution, is the most effective support of national authority submitted to the delegates during the early days of their deliberations. Its weakest feature, namely provision for the coercion of states, was the necessary result of relations between these states and the Confederation they composed. Even the "more perfect Union" of our carefully wrought federal Constitution could not save us from the tragedy of compulsion operating on states claiming to be sovereign. The eighteenth revised Virginia resolution is the best solution of this problem that the Committee of the Whole could offer. It goes no further than to bind by oath the legislative, executive, and judicial powers in the several states

to support the Articles of Union. Boiled down to the essence of each, the New Jersey resolutions created a legal sanction, that of the Committee imposed a moral obligation to support the Constitution.

The seventh New Jersey resolution and the fourteenth resolution of the Committee of the Whole relating to the admission of new states are identical in purpose. As the statement of a preliminary that should be accepted as the basis for the development of details after the fundamental features of the new government have been determined, the former is better than the latter.

The last two New Jersey resolutions, the eighth and ninth, deal with matters not included in the report of the Committee of the Whole. The eighth resolution urges a principle that should become a substantive part of any constitution adequate to the needs of a federal union. The clumsily worded ninth resolution is superfluous because the sovereign right of a state to exercise jurisdiction over offenses committed within its limits is firmly established by law.

This comparison of the two sets of resolutions submitted to the Convention would be incomplete without some reference to recommendations of the Committee of the Whole that have no corresponding provisions in the New Jersey resolutions. The first of these is the fifteenth resolution relative to the continuance of Congress. The New Jersey plan makes Congress the permanent legislative organ of the revised confederation; hence there was no reason for transitional arrangements. The guarantee of republican government recommended by the Committee in the sixteenth resolution could have no place in the New Jersey plan which perpetuates the sovereignty of the states. Finally, the need for a new method of amending the Constitution is stated by the Committee in the seventeenth resolution; whereas the New Jersey plan continues the extremely difficult amending process of the articles.

If this analytical comparison of the two famous plans submitted to the Convention on June 15 has had attentive consideration, the reader can visualize several excellent features of the New Jersey resolutions that deserve more than passing notice.

Speculation in a study of actual development that gave us our unique federal Constitution may be out of place here, but there is ground for the opinion expressed by competent scholars that the New Jersey plan, submitted at the beginning of the session, might have displaced the Virginia plan. "There is a divinity that shapes our ends, rough hew them how we will." Perhaps the two weeks of intensive consideration that preceded the introduction of a rival scheme enabled the makers to see clearly the inherent weaknesses of any confederate government and the consequent necessity for the establishment of a new federal system.

### Debate Culminating in Approval of Virginia Plan

[Madison has preserved in his Notes the most complete summary of the debate on the proposal to substitute the New Jersey plan for that submitted by the Virginia delegation as revised in Committee of the Whole. The arguments included in his summary are given below.]

*June 16* Lansing: Called for the reading of the first resolution of each plan, which he considered as involving principles directly in contrast; that of Mr. Paterson, says he, sustains the sovereignty of the respective states, that of Mr. Randolph destroys it. The latter requires a negative on all the laws of the particular states, the former only certain general power for the general good. The plan of Mr. Randolph in short absorbs all power except what may be exercised in the little local matters of the states which are not objects worthy of the supreme cognizance. He grounded his preference of Mr. Paterson's plan chiefly on two objections to that of Mr. Randolph; first, want of power in the Convention to discuss and propose it, and secondly, the improbability of its being adopted.

1. He was decidedly of opinion that the power of the Convention was restrained to amendments of a federal nature, and having for their basis the Confederacy in being. The acts of Congress, the tenor of the acts of the states, the commissions produced by the several deputations, all proved this. And this

limitation of the power to an amendment of the Confederacy marked the opinion of the states that it was unnecessary and improper to go further. He was sure that this was the case with his state. New York would never have concurred in sending deputies to the Convention if she had supposed the deliberations were to turn on a consolidation of the states and a national government.

2. Was it probable that the states would adopt and ratify a scheme which they had never authorized us to propose and which so far exceeded what they regarded as sufficient? We see by their several acts, particularly in relation to the plan of revenue proposed by Congress in 1783, not authorized by the Articles of Confederation, what were the ideas they then entertained. Can so great a change be supposed to have already taken place? To rely on any change which is hereafter to take place in the sentiments of the people would be trusting to too great an uncertainty. We know only what their present sentiments are. And it is in vain to propose what will not accord with these. The states will never feel a sufficient confidence in a general government to give it a negative on their laws. The scheme is itself totally novel. There is no parallel to it to be found. The authority of Congress is familiar to the people, and an augmentation of the powers of Congress will be readily approved by them.

Paterson: Said, as he had on a former occasion given his sentiments on the plan proposed by Mr. Randolph, he would now, avoiding repetition as much as possible, give his reasons in favor of that proposed by himself. He preferred it because it accorded, first, with the powers of the Convention; secondly, with the sentiments of the people. If the Confederacy was radically wrong, let us return to our states and obtain larger powers, not assume them ourselves. I came here not to speak my own sentiments but the sentiments of those who sent me. Our object is not such a government as may be best in itself, but such a one as our constituents have authorized us to prepare, and as they will approve. If we argue the matter on the supposition that no confederacy at present exists, it cannot be

denied that all the states stand on the footing of equal sovereignty. All, therefore, must concur before any can be bound. If a proportional representation be right, why do we not vote so here? If we argue on the fact that a federal compact actually exists, and consult the articles of it, we still find an equal sovereignty to be the basis of it. He reads the fifth Article of the Confederation, giving each state a vote; and the thirteenth, declaring that no alteration shall be made without unanimous consent. This is the nature of all treaties. What is unanimously done must be unanimously undone. It was observed (by Mr. Wilson) that the larger states gave up the point, not because it was right, but because the circumstances of the moment urged the concession. Be it so. Are they for that reason at liberty to take it back? Can the donor resume his gift without the consent of the donee? This doctrine may be convenient, but it is a doctrine that will sacrifice the lesser states. The larger states acceded readily to the Confederacy. It was the small ones that came in reluctantly and slowly. New Jersey and Maryland were the two last; the former objecting to the want of power in Congress over trade; both of them to the want of power to appropriate the vacant territory to the benefit of the whole. If the sovereignty of the states is to be maintained, the representatives must be drawn immediately from the states, not from the people; and we have no power to vary the idea of equal sovereignty. The only expedient that will cure the difficulty is that of throwing the states into hotchpot. To say that this is impracticable will not make it so. Let it be tried, and we shall see whether the citizens of Massachusetts, Pennsylvania and Virginia accede to it. It will be objected that coercion will be impracticable. But will it be more so in one plan than the other? Its efficacy will depend on the quantum of power collected, not on its being drawn from the states or from the individuals; and according to his plan it may be exerted on individuals as well as according to that of Mr. Randolph. A distinct executive and judiciary also were equally provided by his plan. It is urged that two branches in the legislature are necessary. Why? For the purpose of a check.

But the reason for the precaution is not applicable to this case. Within a particular state, where party heats prevail, such a check may be necessary. In such a body as Congress it is less necessary; and, besides, the delegations of the different states are checks on each other. Do the people at large complain of Congress? No. What they wish is that Congress may have more power. If the power now proposed be not enough, the people hereafter will make additions to it. With proper powers, Congress will act with more energy and wisdom than the proposed national legislature; being fewer in number, and more secreted and refined by the mode of election. The plan of Mr. Randolph will also be enormously expensive. Allowing Georgia and Delaware two representatives each in the popular branch, the aggregate number of that branch will be one hundred and eighty. Add to it half as many for the other branch, and you have two hundred and seventy members, coming once at least a year from the most distant as well as the most central parts of the republic. In the present deranged state of our finances, can so expensive a system be seriously thought of? By enlarging the powers of Congress, the greatest part of this expense will be saved, and all purposes will be answered. At least a trial ought to be made.

Wilson: Entered into a contrast of the principal points of the two plans so far, he said, as there had been time to examine the one last proposed. These points were: (1) In the Virginia plan there are *two*, and in some degree three, branches in the legislature; in the plan from New Jersey there is to be a *single* legislature only. (2) Representation of the people at large is the basis of one; the state legislatures the pillars of the others. (3) Proportional representation prevails in one, equality of suffrage in the other. (4) A single executive magistrate is at the head of the one; a plurality is held out in the other. (5) In the one, a majority of the people of the United States must prevail; in the other, a minority may prevail. (6) The national legislature is to make laws in all cases to which the separate states are incompetent, etc.; in place of this, Congress is to have additional power in a few cases only. (7) A negative on

the laws of the states; in place of this, coercion to be substituted. (8) The executive to be removable on impeachment and conviction, in one plan; in the other, to be removable at the instance of a majority of the executives of the states. (9) Revision of the laws provided for, in one; no such check in the other. (10) Inferior national tribunals, in one; none such in the other. (11) In the one, jurisdiction of national tribunals to extend, etc.; an appellate jurisdiction only allowed in the other. (12) Here, the jurisdiction is to extend to all cases affecting the national peace and harmony; there, a few cases only are marked out. (13) Finally, the ratification is, in this, to be by the people themselves; in that, by the legislative authorities, according to the thirteenth Article of the Confederation.

With regard to the *power of the Convention,* he conceived himself authorized to *conclude nothing,* but to be at liberty to *propose any thing.* In this particular, he felt himself perfectly indifferent to the two plans.

With *regard to the sentiments of the people,* he conceived it difficult to know precisely what they are. Those of the particular circle in which one moved were commonly mistaken for the general voice. He could not persuade himself that the state governments and sovereignties were so much the idols of the people, nor a national government so obnoxious to them as some supposed. Why should a national government be unpopular? Has it less dignity? Will each citizen enjoy under it less liberty or protection? Will a citizen of *Delaware* be degraded by becoming a citizen of the *United* States? Where do the people look at present for relief from the evils of which they complain? Is it from an internal reform of their governments? No, sir. It is from the national councils that relief is expected. For these reasons he did not fear that the people would not follow us into a national government; and it will be a further recommendation of Mr. Randolph's plan that it is to be submitted to *them,* and not to the *legislatures,* for ratification.

Proceeding now to the first point on which he had contrasted the two plans, he observed that, anxious as he was for

some augmentation of the federal powers, it would be with extreme reluctance indeed that he could ever consent to give powers to Congress. He had two reasons, either of which was sufficient: first, Congress, as a legislative body, does not stand on the people; secondly, it is a *single* body.

1. He would not repeat the remarks he had formerly made on the principles of representation. He would only say that an inequality in it has ever been a poison contaminating every branch of government. In Great Britain, where this poison has had a full operation, the security of private rights is owing entirely to the purity of her tribunals of justice, the judges of which are neither appointed nor paid by a venal parliament. The political liberty of that nation, owing to the inequality of representation, is at the mercy of its rulers. He means not to insinuate that there is any parallel between the situation of that country and ours, at present. But it is a lesson we ought not to disregard, that the smallest bodies in Great Britain are notoriously the most corrupt. Every other source of influence must also be stronger in small than in large bodies of men. When Lord Chesterfield had told us that one of the Dutch provinces had been seduced into the views of France, he need not have added that it was not Holland but one of the *smallest* of them. There are facts among ourselves which are known to all. Passing over others, we will only remark that the *impost*, so anxiously wished for by the public, was defeated not by any of the *larger* states in the Union.

2. Congress is a single legislature. Despotism comes on mankind in different shapes, sometimes in an executive, sometimes in a military one. Is there no danger of a legislative despotism? Theory and practice both proclaim it. If the legislative authority be not restrained, there can be neither liberty nor stability; and it can only be restrained by dividing it within itself, into distinct and independent branches. In a single house there is no check, but the inadequate one of the virtue and good sense of those who compose it.

On another great point, the contrast was equally favorable to the plan reported by the Committee of the Whole. It vested

the executive powers in a single magistrate. The plan of New Jersey vested them in a plurality. In order to control the legislative authority, you must divide it. In order to control the executive, you must unite it. One man will be more responsible than three. Three will contend among themselves, till one becomes the master of his colleagues. In the triumvirates of Rome, first Caesar, then Augustus, are witnesses of this truth. The kings of Sparta and the consuls of Rome prove also the factious consequences of dividing the executive magistracy. Having already taken up so much time, he would not, he said, proceed to any of the other points. Those on which he had dwelt are sufficient of themselves; and on the decision of them the fate of the others will depend.

C. Pinckney: The whole comes to this, as he conceived. Give New Jersey an equal vote and she will dismiss her scruples and concur in the national system. He thought the Convention authorized to go any length in recommending, which they found necessary to remedy the evils which produced this Convention.

Ellsworth: Proposed, as a more distinctive form of collecting the mind of the committee on the subject, "that the legislative power of the United States should remain in Congress." This was not seconded, though it seemed better calculated for the purpose than the first proposition of Mr. Paterson, in place of which Mr. Ellsworth wished to substitute it.

Randolph: Was not scrupulous on the point of power. When the salvation of the republic was at stake, it would be treason to our trust not to propose what we found necessary. He painted in strong colors the imbecility of the existing confederacy and the danger of delaying a substantial reform. In answer to the objection drawn from the sense of our constituents, as denoted by their acts relating to the Convention and the objects of their deliberation, he observed that, as each state acted separately in the case, it would have been indecent for it to have charged the existing constitution with all the vices which it might have perceived in it. The first state that set on foot this experiment would not have been justified in going so far, ignorant as it was of the opinion of others, and sensible

as it must have been of the uncertainty of a successful issue to the experiment. There are reasons certainly of a peculiar nature, where the ordinary cautions must be dispensed with; and this is certainly one of them. He would not, as far as depended on him, leave anything that seemed necessary undone. The present moment is favorable and is probably the last that will offer.

The true question is whether we shall adhere to the federal plan or introduce the national plan. The insufficiency of the former has been fully displayed by the trial already made. There are but two modes by which the end of a general government can be attained: the first, by coercion, as proposed by Mr. Paterson's plan; the second, by real legislation, as proposed by the other plan. Coercion he pronounced to be *impracticable, expensive, cruel to individuals.* It tended also to habituate the instruments of it to shed the blood, and riot in the spoils, of their fellow citizens, and consequently trained them up for the service of ambition. We must resort therefore to a *national legislation over individuals;* for which Congress is unfit. To vest such power in them would be blending the legislative with the executive, contrary to the received maxim on this subject. If the union of these powers, heretofore, in Congress has been safe, it has been owing to the general impotency of that body. Congress is, moreover, not elected by the people but by the legislatures, who retain even a power of recall. They have therefore no will of their own; they are a mere diplomatic body, and are always obsequious to the views of the states, who are always encroaching on the authority of the United States. A provision for harmony among the states, as in trade, naturalization, etc.; for crushing rebellion, whenever it may rear its crest; and for certain other general benefits, must be made. The powers for these purposes can never be given to a body inadequate as Congress is in point of representation, elected in the mode in which they are, and possessing no more confidence than they do: for notwithstanding what has been said to the contrary, his own experience satisfied him that a rooted distrust of Congress pretty generally prevailed.

A national government alone, properly constituted, will answer the purpose; and he begged it to be considered that the present is the last moment for establishing one. After this select experiment, the people will yield to despair.

*June 18* Hamilton: Had been hitherto silent on the business before the Convention, partly from respect to others whose superior abilities, age and experience rendered him unwilling to bring forward ideas dissimilar to theirs; and partly from his delicate situation with respect to his own state, to whose sentiments, as expressed by his colleagues, he could by no means accede. The crisis, however, which now marked our affairs was too serious to permit any scruples whatever to prevail over the duty imposed on every man to contribute his efforts for the public safety and happiness. He was obliged, therefore, to declare himself unfriendly to both plans. He was particularly opposed to that from New Jersey, being fully convinced that no amendment of the Confederation, leaving the states in possession of their sovereignty, could possibly answer the purpose. On the other hand, he confessed he was much discouraged by the amazing extent of country, in expecting the desired blessings from any general sovereignty that could be substituted. As to the powers of the Convention, he thought the doubts started on that subject had arisen from distinctions and reasonings too subtle. A *federal* government he conceived to mean an association of independent communities into one. Different confederacies have different powers, and exercise them in different ways. In some instances, the powers are exercised over collective bodies; in others, over individuals, as in the German Diet; and among ourselves, in cases of piracy. Great latitude, therefore, must be given to the signification of the term. The plan last proposed departs, itself, from the *federal* idea, as understood by some, since it is to operate eventually on individuals. He agreed moreover with the honorable gentleman from Virginia (Mr. Randolph), that we owed it to our country to do, on this emergency, whatever we should deem essential to its happiness. The states sent us here to provide for the exigencies of the Union. To rely on and propose any plan not adequate

to these exigencies, merely because it was not clearly within our powers, would be to sacrifice the means to the end. It may be said that the *states* cannot *ratify* a plan not within the purview of the Article of the Confederation providing for alterations and amendments. But may not the states themselves, in which no constitutional authority equal to this purpose exists in the legislatures, have had in view a reference to the people at large? In the senate of New York, a proviso was moved that no act of the Convention should be binding until it should be referred to the people and ratified; and the motion was lost by a single voice only, the reason assigned against it being that it might possibly be found an inconvenient shackle.

The great question is what provision shall we make for the happiness of our country? He would first make a comparative examination of the two plans—prove that there were essential defects in both—and point out such changes as might render a *national one* efficacious. The great and essential principles necessary for the support of government are: (1) An active and constant interest in supporting it. This principle does not exist in the states in favor of the federal government. They have evidently in a high degree, the *esprit de corps*. They constantly pursue internal interests adverse to those of the whole. They have their particular debts, their particular plans of finance, etc. All these, when opposed to, invariably prevail over the requisitions and plans of Congress. (2) The love of power. Men love power. The same remarks are applicable to this principle. The states have constantly shown a disposition rather to regain the powers delegated by them than to part with more, or to give effect to what they had parted with. The ambition of their demagogues is known to hate the control of the general government. It may be remarked, too, that the citizens have not that anxiety to prevent a dissolution of the general government as of the particular governments. A dissolution of the latter would be fatal; of the former, would still leave the purposes of government attainable to a considerable degree. Consider what such a state as Virginia will be in a few years, a few compared with the life of nations. How strongly will it feel its

importance and self-sufficiency! (3) An habitual attachment of the people. The whole force of this tie is on the side of the state government. Its sovereignty is immediately before the eyes of the people; its protection is immediately enjoyed by them. From its hand distributive justice, and all those acts which familiarize and endear a government to a people are dispensed to them. (4) *Force,* by which may be understood a *coercion of laws* or *coercion of arms.* Congress has not the former, except in few cases. In particular states this coercion is nearly sufficient; though he held it in most cases not entirely so. A certain portion of military force is absolutely necessary in large communities. Massachusetts is now feeling this necessity, and making provision for it. But how can this force be exerted on the states collectively? It is impossible. It amounts to a war between the two parties. Foreign powers also will not be idle spectators. They will interpose; the confusion will increase; and a dissolution of the Union will ensue. (5) *Influence* —he did not mean corruption, but a dispensation of those regular honors and emoluments which produce an attachment to the government. Almost all the weight of these is on the side of the states; and must continue so as long as the states continue to exist. All the passions, then, we see, of avarice, ambition, interest, which govern most individuals, and all public bodies, fall into the current of the states and do not flow into the stream of the general government. The former, therefore, will generally be an overmatch for the general government, and render any confederacy in its very nature precarious. Theory is in this case fully confirmed by experience. The Amphictyonic Council had, it would seem, ample powers for general purposes. It had, in particular, the power of fining and using force against delinquent members. What was the consequence? Their decrees were mere signals of war. The Phocian War is a striking example of it. Philip at length, taking advantage of their disunion, and insinuating himself into their councils, made himself master of their fortunes. The German confederacy affords another lesson. The authority of Charlemagne seemed to be as great as could be necessary. The

great feudal chiefs, however, exercising their local sovereignties, soon felt the spirit, and found the means, of encroachments, which reduced the imperial authority to a nominal sovereignty. The Diet has succeeded, which, though aided by a prince at its head, of great authority independently of his imperial attributes, is a striking illustration of the weakness of confederated governments. Other examples instruct us in the same truth. The Swiss cantons have scarce any union at all and have been more than once at war with one another. How then are all these evils to be avoided? Only by such a complete sovereignty in the general government as will turn all the strong principles and passions above-mentioned on its side. Does the scheme of New Jersey produce this effect? Does it afford any substantial remedy whatever? On the contrary, it labors under great defects, and the defect of some of its provisions will destroy the efficacy of others. It gives a direct revenue to Congress, but this will not be sufficient. The balance can only be supplied by requisitions; which experience proves cannot be relied on. If states are to deliberate on the mode, they will also deliberate on the object of the supplies, and will grant or not grant, as they approve or disapprove of it. The delinquency of one will invite and countenance it in others. Quotas too must, in the nature of things, be so unequal as to produce the same evil. To what standard will you resort? Land is a fallacious one. Compare Holland with Russia; France or England with other countries of Europe; Pennsylvania with North Carolina—will the relative pecuniary abilities, in those instances, correspond with the relative value of land? Take numbers of inhabitants for the rule and make like comparison of different countries, and you will find it to be equally unjust. The different degrees of industry and improvement in different countries render the first object a precarious measure of wealth. Much depends, too, on *situation*. Connecticut, New Jersey, and North Carolina, not being commercial states, and contributing to the wealth of the commercial ones, can never bear quotas assessed by the ordinary rules of proportion. They will, and must, fail in their duty. Their example will be fol-

lowed—and the union itself be dissolved. Whence, then, is the national revenue to be drawn? From commerce; even from exports, which, notwithstanding the common opinion, are fit objects of moderate taxation; from excise, etc., etc.—These, though not equal, are less unequal than quotas. Another destructive ingredient in the plan is that equality of suffrage which is so much desired by the small states. It is not in human nature that Virginia and the large states should consent to it; or, if they did, that they should long abide by it. It shocks too much all ideas of justice and every human feeling. Bad principles in a government, though slow, are sure in their operation, and will gradually destroy it. A doubt has been raised whether Congress at present has a right to keep ships or troops in time of peace. He leans to the negative. Mr. Paterson's plan provides no remedy. If the powers proposed were adequate, the organization of Congress is such that they could never be properly and effectually exercised. The members of Congress, being chosen by the states and subject to recall, represent all the local prejudices. Should the powers be found effectual, they will from time to time be heaped on them, till a tyrannic sway shall be established. The general power, whatever be its form, if it preserves itself, must swallow up the state powers. Otherwise it will be swallowed up by them. It is against all the principles of a good government to vest the requisite powers in such a body as Congress. Two sovereignties cannot co-exist within the same limits. Giving powers to Congress must eventuate in a bad government, or in no government. The plan of New Jersey, therefore, will not do. What, then, is to be done? Here he was embarrassed. The extent of the country to be governed discouraged him. The expense of a general government was also formidable; unless there were such a diminution of expense on the side of the state governments as the case would admit. If they were extinguished, he was persuaded that great economy might be obtained by substituting a general government. He did not mean, however, to shock the public opinion by proposing such a measure. On the other hand, he saw no *other* necessity for declining it. They are not necessary

for any of the great purposes of commerce, revenue, or agriculture. Subordinate authorities, he was aware, would be necessary. There must be district tribunals; corporations for local purposes. But *cui bono* the vast and expensive apparatus now appertaining to the states? The only difficulty of a serious nature which occurred to him was that of drawing representatives from the extremes to the centre of the community. What inducements can be offered that will suffice? The moderate wages for the first branch could only be a bait to little demagogues. Three dollars or thereabouts, he supposed, would be the utmost. The Senate, he feared, from a similar cause would be filled by certain undertakers who wish for particular offices under the government. This view of the subject almost led him to despair that a republican government could be established over so great an extent. He was sensible, at the same time, that it would be unwise to propose one of any other form. In his private opinion he had no scruple in declaring, supported as he was by the opinion of so many of the wise and good, that the British government was the best in the world; and that he doubted much whether any thing short of it would do in America. He hoped gentlemen of different opinions would bear with him in this, and begged them to recollect the change of opinion on this subject which had taken place, and was still going on. It was once thought that the power of Congress was amply sufficient to secure the end of their institution. The error was now seen by every one. The members most tenacious of republicanism, he observed, were as loud as any in declaiming against the vices of democracy. This progress of the public mind led him to anticipate the time when others as well as himself would join in the praise bestowed by Mr. Neckar on the British constitution, namely, that it is the only government in the world "which unites public strength with individual security." In every community where industry is encouraged there will be a division of it into the few and the many. Hence, separate interests will arise. There will be debtors and creditors, etc. Give all power to the many, they will oppress the few. Give all power to the few, they will op-

press the many. Both, therefore, ought to have the power, that each may defend itself against the other. To the want of this check we owe our paper money, instalment laws, etc. To the proper adjustment of it the British owe the excellence of their constitution. Their House of Lords is a most noble institution. Having nothing to hope for by a change and a sufficient interest, by means of their property, in being faithful to the national interest, they form a permanent barrier against every pernicious innovation, whether attempted on the part of the Crown or of the Commons. No temporary Senate will have firmness enough to answer the purpose. The senate of Maryland which seems to be so much appealed to, has not yet been sufficiently tried. Had the people been unanimous and eager in the late appeal to them on the subject of a paper emission, they would have yielded to the torrent. Their acquiescing in such an appeal is a proof of it. Gentlemen differ in their opinions concerning the necessary checks, from the different estimates they form of the human passions. They suppose seven years a sufficient period to give the Senate an adequate firmness, from not duly considering the amazing violence and turbulence of the democratic spirit. When a great object of government is pursued, which seizes the popular passions, they spread like wild-fire and become irresistible. He appealed to the gentlemen from the New England states whether experience had not there verified the remark. As to the executive, it seemed to be admitted that no good one could be established on republican principles. Was not this giving up the merits of the question; for can there be a good government without a good executive? The English model was the only good one on this subject. The hereditary interest of the King was so interwoven with that of the nation, and his personal emolument so great, that he was placed above the danger of being corrupted from abroad; and at the same time was both sufficiently independent and sufficiently controlled to answer the purpose of the institution at home. One of the weak sides of republics was their being liable to foreign influence and corruption. Men of little character, acquiring great power, become easily the

tools of intermeddling neighbors. Sweden was a striking instance. The French and English had each their parties during the late revolution, which was effected by the predominant influence of the former. What is the inference from all these observations? That we ought to go as far, in order to attain stability and permanency, as republican principles will admit. Let one branch of the legislature hold their places for life, or at least during good behavior. Let the executive also be for life. He appealed to the feelings of the members present whether a term of seven years would induce the sacrifices of private affairs which an acceptance of public trust would require, so as to ensure the services of the best citizens. On this plan we should have in the Senate a permanent will, a weighty interest which would answer essential purposes. But is this a republican government, it will be asked? Yes, if all the magistrates are appointed and vacancies are filled by the people, or a process of election originating with the people. He was sensible that an executive, constituted as he proposed would have in fact but little of the power and independence that might be necessary. On the other plan of appointing him for seven years, he thought the executive ought to have but little power. He would be ambitious, with the means of making creatures; and as the object of his ambition would be to *prolong* his power, it is probable that in case of war he would avail himself of the emergency to evade or refuse a degradation from his place. An executive for life has not this motive for forgetting his fidelity, and will therefore be a safer depository of power. It will be objected, probably, that such an executive will be an *elective monarch,* and will give birth to the tumults which characterize that form of government. He would reply that *monarch* is an indefinite term. It marks not either the degree or duration of power. If this executive magistrate would be a monarch for life, the other proposed by the Report from the Committee of the Whole would be a monarch for seven years. The circumstance of being elective was also applicable to both. It had been observed by judicious writers that elective monarchies would be the best if they could be guarded against the *tumults* ex-

cited by the ambition and intrigues of competitors. He was not sure that tumults were an inseparable evil. He thought this character of elective monarchies had been taken rather from particular cases than from general principles. The election of Roman emperors was made by the *army*. In *Poland* the election is made by great rival *princes,* with independent power and ample means of raising commotions. In the German Empire, the appointment is made by the electors and princes, who have equal motives and means for exciting cabals and parties. Might not such a mode of election be devised among ourselves, as will defend the community against these effects in any dangerous degree? Having made these observations, he would read to the Committee a sketch of a plan which he should prefer to either of those under consideration. He was aware that it went beyond the ideas of most members. But will such a plan be adopted out of doors? In return he would ask, will the people adopt the other plan? At present they will adopt neither. But he sees the Union dissolving, or already dissolved —he sees evils operating in the states which must soon cure the people of their fondness for democracies—he sees that a great progress has been already made, and is still going on, in the public mind. He thinks, therefore, that the people will in time be unshackled from their prejudices; and whenever that happens, they will themselves not be satisfied at stopping where the plan of Mr. Randolph would place them, but be ready to go as far at least as he proposes. He did not mean to offer the paper he had sketched as a proposition to the Committee. It was meant only to give a more correct view of his ideas, and to suggest the amendments which he should probably propose to the plan of Mr. Randolph, in the proper stages of its future discussion. He reads his sketch in the words following, to wit:

I. The supreme legislative power of the United States of America to be vested in two different bodies of men; the one to be called the Assembly, the other the Senate; who together shall form the legislature of the United States, with power to pass all laws whatsoever, subject to the negative hereafter mentioned.

II. The Assembly to consist of persons elected by the people to serve for three years.

III. The Senate to consist of persons elected to serve during good behavior; their election to be made by electors chosen for that purpose by the people. In order to [do] this, the states to be divided into election districts. On the death, removal or resignation of any senator, his place to be filled out of the district from which he came.

IV. The supreme executive authority of the United States to be vested in a governor, to be elected to serve during good behavior; the election to be made by electors chosen by the people in the election districts aforesaid. The authorities and functions of the executive to be as follows: to have a negative on all laws about to be passed, and the execution of all laws passed; to have the direction of war when authorized or begun; to have, with the advice and approbation of the Senate, the power of making all treaties; to have the sole appointment of the heads or chief officers of the Departments of Finance, War, and Foreign Affairs; to have the nomination of all other officers (ambassadors to foreign nations included), subject to the approbation or rejection of the Senate; to have the power of pardoning all offenses except treason, which he shall not pardon without the approbation of the Senate.

V. On the death, resignation, or removal of the governor, his authorities to be exercised by the president of the Senate till a successor be appointed.

VI. The Senate to have the sole power of declaring war; the power of advising and approving all treaties; the power of approving or rejecting all appointments of officers, except the heads or chiefs of the Departments of Finance, War, and Foreign Affairs.

VII. The supreme judicial authority to be vested in judges, to hold their offices during good behavior, with adequate and permanent salaries. This court to have original jurisdiction in all causes of capture, and an appellative jurisdiction in all causes in which the revenues of the general government, or the citizens of foreign nations, are concerned.

VIII. The legislature of the United States to have power to institute courts in each state for the determination of all matters of general concern.

IX. The governor, senators, and all officers of the United States, to be liable to impeachment for mal- and corrupt conduct; and upon conviction to be removed from office, and disqualified for holding any place of trust or profit: all impeachments to be tried by a court to consist of the chief ———, or judge of the superior court of law of each state, provided such judge shall hold his place during good behavior and have a permanent salary.

X. All laws of the particular states contrary to the Constitution or laws of the United States to be utterly void; and the better to prevent such laws being passed, the governor or president of each state shall be appointed by the general government, and shall have a negative upon the laws about to be passed in the state of which he is the governor or president.

XI. No state to have any forces land or naval; and the militia of all the states to be under the sole and exclusive direction of the United States, the officers of which to be appointed and commissioned by them.

On these several articles he entered into explanatory observations[6] corresponding with the principles of his introductory reasoning.

*June 19* Madison: Much stress has been laid by some gentlemen on the want of power in the Convention to propose any other than a *federal* plan. To what had been answered by others, he would only add that neither of the characteristics attached to a *federal* plan would support this objection. One characteristic was that in a *federal* government the power was exercised not on the people *individually*, but on the people *collectively*, on the states. Yet in some instances, as in piracies, captures, etc.,

[6] The speech introducing the plan as above taken down and written out, was seen by Mr. Hamilton, who approved its correctness, with one or two verbal changes, which were made as he suggested. The explanatory observations which did not immediately follow, were to have been furnished by Mr. Hamilton, who did not find leisure at the time to write them out, and they were not obtained.

the existing Confederacy, and in many instances the amendments to it proposed by Mr. Paterson, must operate immediately on individuals. The other characteristic was that a *federal* government derived its appointments not immediately from the people but from the states which they respectively composed. Here, too, were facts on the other side. In two of the states, Connecticut and Rhode Island, the delegates to Congress were chosen, not by the legislatures, but by the people at large; and the plan of Mr. Paterson intended no change in this particular.

It had been alleged (by Mr. Paterson) that the Confederation, having been formed by unanimous consent, could be dissolved by unanimous consent only. Does this doctrine result from the nature of compacts? Does it arise from any particular stipulation in the Articles of Confederation? If we consider the federal Union as analogous to the fundamental compact by which individuals compose one society, and which must, in its theoretic origin at least, have been the unanimous act of the component members, it cannot be said that no dissolution of the compact can be effected without unanimous consent. A breach of the fundamental principles of the compact by a part of the society would certainly absolve the other part from their obligations to it. If the breach of *any* article by *any* of the parties does not set the others at liberty, it is because the contrary is *implied* in the compact itself, and particularly by that law of it which gives an indefinite authority to the majority to bind the whole, in all cases. This latter circumstance shows that we are not to consider the federal Union as analogous to the social compact of individuals: for if it were so, a majority would have a right to bind the rest, and even to form a new Constitution for the whole; which the gentleman from New Jersey would be among the last to admit. If we consider the federal Union as analogous, not to the social compacts among individual men, but to the conventions among individual states, what is the doctrine resulting from these conventions? Clearly, according to the expositors of the law of nations, that a breach of any one article

by any one party leaves all the other parties at liberty to consider the whole convention as dissolved, unless they choose rather to compel the delinquent party to repair the breach. In some treaties, indeed, it is expressly stipulated that a violation of particular articles shall not have this consequence, and even that particular articles shall remain in force during war which is in general understood to dissolve all subsisting treaties. But are there any exceptions of this sort to the Articles of Confederation? So far from it, that there is not even an express stipulation that force shall be used to compel an offending member of the Union to discharge its duty. He observed that the violations of the federal Articles had been numerous and notorious. Among the most notorious was an act of New Jersey herself; by which she *expressly refused* to comply with a constitutional requisition of Congress, and yielded no further to the expostulations of their deputies than barely to rescind her vote of refusal, without passing any positive act of compliance. He did not wish to draw any rigid inferences from these observations. He thought it proper, however, that the true nature of the existing Confederacy should be investigated, and he was not anxious to strengthen the foundations on which it now stands.

Proceeding to the consideration of Mr. Paterson's plan, he stated the object of a proper plan to be twofold—first, to preserve the Union; secondly, to provide a government that will remedy the evils felt by the states, both in their united and individual capacities. Examine Mr. Paterson's plan, and say whether it promises satisfaction in these respects.

1. Will it prevent the violations of the law of nations and of treaties which, if not prevented, must involve us in the calamities of foreign wars? The tendency of the states to these violations has been manifested in sundry instances. The files of Congress contain complaints already from almost every nation with which treaties have been formed. Hitherto indulgence has been shown to us. This cannot be the permanent disposition of foreign nations. A rupture with other powers is among the greatest of national calamities. It ought, there-

fore, to be effectually provided that no part of a nation shall have it in its power to bring them on the whole. The existing Confederacy does not sufficiently provide against this evil. The proposed amendment to it does not supply the omission. It leaves the will of the states as uncontrolled as ever.

2. Will it prevent encroachments on the federal authority? A tendency to such encroachments has been sufficiently exemplified among ourselves as well as in every other confederated republic, ancient and modern. By the federal Articles, transactions with the Indians appertain to Congress, yet in several instances the states have entered into treaties and wars with them. In like manner, no two or more states can form among themselves any treaties, etc., without the consent of Congress: yet Virginia and Maryland, in one instance—Pennsylvania and New Jersey in another—have entered into compacts without previous application or subsequent apology. No state, again, can of right raise troops in time of peace with[out] the like consent. Of all cases of the league, this seems to require the most scrupulous observance. Has not Massachusetts, notwithstanding, the most powerful member of the Union, already raised a body of troops? Is she not now augmenting them, without having even deigned to apprise Congress of her intentions? In fine, have we not seen the public land dealt out to Connecticut to bribe her acquiescence in the decree constitutionally awarded against her claim on the territory of Pennsylvania? For no other possible motive can account for the policy of Congress in that measure. If we recur to the examples of other confederacies, we shall find in all of them the same tendency of the parts to encroach on the authority of the whole. He then reviewed the Amphictyonic and Achaean confederacies, among the ancients, and the Helvetic, Germanic, and Belgic, among the moderns; tracing their analogy to the United States in the constitution and extent of their federal authorities; in the tendency of the particular members to usurp on these authorities, and to bring confusion and ruin on the whole. He observed that the plan of Mr. Paterson, besides omitting a control over the states, as a gen-

eral defense of the federal prerogatives, was particularly defective in two of its provisions. In the first place, its ratification was not to be by the people at large, *but by the legislatures*. It could not, therefore, render the acts of Congress, in pursuance of their powers, even legally *paramount* to the acts of the states. And in the second place, it gave to the federal tribunal an appellate jurisdiction only even in the criminal cases enumerated. The necessity of any such provision supposed a danger of undue acquittal in the state tribunals—of what avail would an appellate tribunal be after an acquittal? Besides, in the most, if not all, of the states, the executives have, by their respective *constitutions*, the right of pardoning—how could this be taken from them by a legislative ratification only?

3. Will it prevent trespasses of the states on each other? Of these enough has been already seen. He instanced acts of Virginia and Maryland, which gave a preference to their own citizens in cases where the citizens of other states are entitled to equality of privileges by the Articles of Confederation. He considered the emissions of paper money and other kindred measures as also aggressions. The states, relatively to one another, being each of them either debtor or creditor, the creditor states must suffer unjustly from every emission by the debtor states. We have seen retaliating acts on the subject which threatened danger, not to the harmony only but the tranquillity of the Union. The plan of Mr. Paterson, not giving even a negative on the acts of the states, left them as much at liberty as ever to execute their unrighteous projects against each other.

4. Will it secure the internal tranquillity of the states themselves? The insurrections in Massachusetts admonished all the states of the danger to which they were exposed. Yet the plan of Mr. Paterson contained no provisions for supplying the defect of the Confederation on this point. According to the republican theory, indeed, right and power being both vested in the majority, are held to be synonymous. According to fact and experience, a minority may, in an appeal to force,

be an overmatch for the majority—in the first place, if the minority happen to include all such as possess the skill and habits of military life, with such as possess the great pecuniary resources, one-third may conquer the remaining two-thirds; in the second place, one-third of those who participate in the choice of rulers may be rendered a majority by the accession of those whose poverty disqualifies them from a suffrage, and who, for obvious reasons, must be more ready to join the standard of sedition than that of established government; and, in the third place, where slavery exists, the republican theory becomes still more fallacious.

5. Will it secure a good internal legislation and administration to the particular states? In developing the evils which vitiate the political system of the United States, it is proper to take into view those which prevail within the states individually, as well as those which affect them collectively; since the former indirectly affect the whole, and there is great reason to believe that the pressure of them had a full share in the motives which produced the present convention. Under this head he enumerated and animadverted on, first, the multiplicity of the laws passed by the several states; secondly, the mutability of their laws; thirdly, the injustice of them; and fourthly, the impotence of them—observing that Mr. Paterson's plan contained no remedy for this dreadful class of evils, and could not therefore be received as an adequate provision for the exigencies of the community.

6. Will it secure the Union against the influence of foreign powers over its members? He pretended not to say that any such influence had yet been tried; but it was naturally to be expected that occasions would produce it. As lessons which claimed particular attention, he cited the intrigues practiced among the Amphictyonic confederates, first by the kings of Persia, and afterwards fatally by Philip of Macedon; among the Achaeans, first by Macedon, and afterwards, no less fatally, by Rome; among the Swiss, by Austria, France, and the lesser neighboring powers; among the members of the Germanic body, by France, England, Spain and Russia; and in the Belgic

republic, by all the great neighboring powers. The plan of Mr. Paterson, not giving to the general councils any negative on the will of the particular states, left the door open for the like pernicious machinations among ourselves.

7. He begged the smaller states, which were most attached to Mr. Paterson's plan, to consider the situation in which it would leave them. In the first place, they would continue to bear the whole expense of maintaining their delegates in Congress. It ought not to be said that if they were willing to bear this burden, no others had a right to complain. As far as it led the smaller states to forbear keeping up a representation, by which the public business was delayed, it was evidently a matter of common concern. An examination of the minutes of Congress would satisfy every one that the public business had been frequently delayed by this cause; and that the states most frequently unrepresented in Congress were not the larger states. He reminded the Convention of another consequence of leaving on a small state the burden of maintaining a representation in Congress. During a considerable period of the war, one of the representatives of Delaware in whom alone, before the signing of the Confederation, the entire vote of the state, and after that event one-half of its vote, frequently resided, was a citizen and resident of Pennsylvania and held an office in his own state incompatible with an appointment from it to Congress. During another period the same state was represented by three delegates, two of whom were citizens of Pennsylvania and the third a citizen of New Jersey. These expedients must have been intended to avoid the burden of supporting delegates from their own state. But whatever might have been the cause, was not in effect the vote of one state doubled, and the influence of another increased by it? In the second place the coercion on which the efficacy of the plan depends can never be exerted but on themselves. The larger states will be impregnable, the smaller only can feel the vengeance of it. He illustrated the position by the history of the Amphictyonic confederates; and the ban of the German Empire. It was the cobweb which

could entangle the weak, but would be the sport of the strong.

8. He begged them to consider the situation in which they would remain, in case their pertinacious adherence to an inadmissible plan should prevent the adoption of any plan. The contemplation of such an event was painful; but it would be prudent to submit to the task of examining it at a distance, that the means of escaping it might be the more readily embraced. Let the union of the states be dissolved, and one of two consequences must happen. Either the states must remain individually independent and sovereign, or two or more confederacies must be formed among them. In the first event, would the small states be more secure against the ambition and power of their larger neighbors than they would be under a general government pervading with equal energy every part of the empire, and having an equal interest in protecting every part against every other part? In the second, can the smaller expect that their larger neighbors would confederate with them on the principle of the present Confederacy, which gives to each member an equal suffrage; or that they would exact less severe concessions from the smaller states than are proposed in the scheme of Mr. Randolph.

The great difficulty lies in the affair of representation, and if this could be adjusted, all others would be surmountable. It was admitted by both the gentlemen from New Jersey (Mr. Brearley and Mr. Paterson) that it would not be *just to allow Virginia,* which was sixteen times as large as Delaware, an equal vote only. Their language was that it would not be *safe for Delaware* to allow Virginia sixteen times as many votes. The expedient proposed by them was that all the states should be thrown into one mass and a new partition be made into thirteen equal parts. Would such a scheme be practicable? The dissimilarities existing in the rules of property as well as in the manners, habits and prejudices of different states amounted to a prohibition of the attempt. It had been found impossible for the power of one of the most absolute princes in Europe (the King of France), directed by the wisdom of one of the most enlightened and patriotic min-

isters (Mr. Neckar) that any age has produced, to equalize, in some points only, the different usages and regulations of the different provinces. But admitting a general amalgamation and repartition of the states to be practicable, and the danger apprehended by the smaller states from a proportional representation to be real—would not a particular and voluntary coalition of these with their neighbors be less inconvenient to the whole community and equally effectual for their own safety? If New Jersey or Delaware conceived that an advantage would accrue to them from an equalization of the states, in which case they would necessarily form a junction with their neighbors, why might not this end be attained by leaving them at liberty by the Constitution to form such a junction whenever they pleased? And why should they wish to obtrude a like arrangement on all the states when it was, to say the least, extremely difficult, would be obnoxious to many of the states, and when neither the inconvenience nor the benefit of the expedient to themselves would be lessened by confining it to themselves? The prospect of many new states to the westward was another consideration of importance. If they should come into the Union at all, they would come when they contained but few inhabitants. If they should be entitled to vote according to their proportion of inhabitants, all would be right and safe. Let them have an equal vote, and a more objectionable minority than ever might give law to the whole.

On the question, moved by Mr. King, whether the Committee should rise and Mr. Randolph's proposition be reported without alteration, which was in fact a question whether Mr. Randolph's should be adhered to as preferable to those of Mr. Paterson: Yeas 7 (Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia); nays 3 (New York, New Jersey, Delaware); divided 1 (Maryland).

## Analysis of Arguments on the Two Plans

[Insertion by Compiler]

Supporters of the New Jersey plan invoked existing laws as determining factors in the drafting process. They felt obligated, as Paterson put it, to speak the sentiments of the people who sent them, not their own sentiments. They found in the credentials of delegates an imperative mandate to improve the Articles of Confederation by amendment, not to displace them with a new system. If directions of a principal are legally binding on an agent, this contention was sound; but it overlooked the fact that the Virginia plan asserted the right of the real principal to accept or reject the work of an agent in the great task of constitution-making, an assertion sustained by principles of political science, and by the practice of states where the right of the people to pass directly on drafts approved by constitutional conventions was recognized as a fundamental of popular government. The champions of the New Jersey plan were legalists, either on principle or for policy.

On the other hand, supporters of the Virginia plan relied on existing need as the determining factor in the drafting process. They accepted Wilson's conception of the Convention's power —namely, that it was authorized to conclude nothing, but might propose anything. As stated by Randolph, this conviction obligated them, when the salvation of the republic was at stake, to propose what they deemed necessary. They asserted the right of the people, acting through conventions assembled for that purpose in the several states, to make the final decision. The proponents of the Virginia plan were statesmen in the best sense of that word.

Champions of the New Jersey plan stressed the loss of sovereignty and legal equality by the states under the Virginia proposals, the consequent hostility of public sentiment, and the probable rejection of the whole scheme. This argument ignored the logic of events and the persuasive power of leadership in ratifying conventions. Complete sovereignty of states was the inherent defect of the Articles of Confederation that the Vir-

ginia plan was designed to remedy. But it was claimed that because these Articles were unanimously made they must be unanimously unmade. To this Madison replied that violation of any provision under which individuals are bound into one society by compact, or states are brought into a union by treaty, would justify dissolution in accordance with the compact theory in the one case, the law of nations in the other—and he called attention to "numerous and notorious" violations which had made the Articles unworkable.

Other arguments against the Virginia plan were the proposal of a bicameral legislature with proportional representation in both branches, the power of the national legislature to negative state laws, the enormous expense of the new system, and the impossibility of equalizing under the Articles the size of states except by throwing them into hotchpotch. Subsequent developments proved the correctness of the objections to proportional representation in both branches, the negative on state laws, and the expense of a federal system. The curious claim that states must be thrown into hotchpotch to avoid certain consequences of geographical inequality was a *non sequitur* of some value as parliamentary strategy.

Other points made by supporters of the Virginia plan in this crucial debate are Wilson's terse contrasts of the schemes under consideration—impossible to condense further or paraphrase, but very effective in visualizing features of the two plans to the disadvantage of the proposed substitute—his claim that Congress as a single legislative body might exercise tyrannical powers without such checks as the Virginia plan provided; and Randolph's condemnation of coercion as the ultimate sanction for making the will of Congress operative in the states.

Madison's powerful indictment of the New Jersey plan is particularly noteworthy. Paraphrasing the questions that his arguments answered, he demonstrated the inability of that plan to prevent violations of the law of nations and of treaties; to frustrate encroachments on federal authority; to forbid trespasses of states on each other; to secure the internal tranquillity of states; to promote good internal legislation and administration in the

states; and to guard the Union against the influence of foreign powers on states. He directed attention to the burden it placed on the states of maintaining their delegates in Congress, and the danger to the public interest of withholding representation for reasons of economy. Finally he pictured vividly the deplorable condition of small states if "pertinacious adherence to an inadmissible plan should prevent the adoption of any plan." This masterful exposition was, without further discussion, followed by a vote rejecting the New Jersey plan by more than two to one.

The remarkable discourse of Alexander Hamilton is in several respects the finest specimen of independent thinking recorded in Madison's Notes. He found himself opposed to the sentiments expressed by his colleagues from New York. He felt obliged to declare himself unfriendly to both plans before the Committee of the Whole. Although he recognized the necessity of a republic for the government of this country, he opposed a federal system, invoking the political axiom that two sovereignties cannot coexist within the same limits. He was a proponent of a *national* government, far removed in principle from that advocated by such constructive leaders as Madison and Wilson whose efforts were rewarded by the establishment of a workable federal government. With mathematical precision he elucidated certain principles declared essential to the support of government, and showed how each operates to the disadvantage of the Union in a federal system. The principles he used for this purpose are: (1) an active and constant interest in supporting government; (2) love of power; (3) an habitual attachment of the people; (4) force, which is either the coercion of laws or the coercion of arms; (5) dispensation of honors or emoluments. The light of history permits us to get from the operation of these principles different results.

Hamilton's admiration for the British government leads him to approach its model as closely as republican principles will permit. He defines a republic as a government all of whose magistrates are appointed and vacancies are filled by the people or a process of election originating with the people. His plan for such a government included an executive indirectly elected for life,

an assembly directly elected for three years, a senate indirectly elected to serve during good behavior, an appointed judiciary to serve during good behavior, and executives of states appointed by the national executive.

Comment on the attitude of delegates towards popular government seems appropriate here. Praise of the British system was general, but all believed that a republic must be established in the United States. There was a permeating distrust of democracy which ignored the fact that a republic is an attenuated democracy, with certain defects of its own. They failed to foresee the necessity of a party system, and to guard against its evils. The result was perennial party organizations, maintained as ends in themselves by parasitic practices, and producing biennially and quadrennially a crop of candidates who rely more on political jugglery than on the enlightenment of the public. This lack of prophetic foresight has made America a stronghold for bosses and spoilsmen.

## CHAPTER 3

# STAGES IN THE DEVELOPMENT OF THE VIRGINIA PLAN

### DEVELOPMENT OF PRELIMINARIES

[This important preparatory stage began with the introduction of the Virginia plan on May 29, and ended with the report of the Committee of the Whole on June 19. During that period the Convention in Committee of the Whole considered the resolutions of the Virginia plan seriatim, with frequent reconsiderations, listened with great profit to the discussions of its creative thinkers, acted with sound judgment for the most part on propositions brought to a vote, and developed a perspective of a federal system which dominated subsequent proceedings, despite dangerous onslaughts and insidious chiselings. The value of the committee's deliberations may be measured, first, by the votes of silent delegates which in every case determined results; second, by the quality of the decisions themselves; and third, by the correlation of agreements reached. With very few exceptions, the recommendations of the Committee of the Whole became the foundation of the new federal superstructure.]

### REPORT OF COMMITTEE OF THE WHOLE

1. Resolved, that it is the opinion of this committee that a national government ought to be established, consisting of a supreme legislative, executive and judiciary.

2. Resolved, that the national legislature ought to consist of two branches.

3. Resolved, that the members of the first branch of the national legislature ought to be elected by the people of the several states for the term of three years, to receive fixed stipends by which they may be compensated for the devotion of their time to the public service, to be paid out of the national treasury: to be ineligible to any office established by a particular state, or under the authority of the United States (except those peculiarly belonging to the functions of the first branch), during the term of service, and under the national government for the space of one year after its expiration.

4. Resolved, that the members of the second branch of the national legislature ought to be chosen by the individual legislatures, to be of the age of thirty years at least, to hold their offices for a term sufficient to ensure their independence, namely, seven years, to receive fixed stipends by which they may be compensated for the devotion of their time to the public service to be paid out of the national treasury; to be ineligible to any office established by a particular state, or under the authority of the United States (except those peculiarly belonging to the functions of the second branch) during the term of service, and under the national government for the space of one year after its expiration.

5. Resolved, that each branch ought to possess the right of originating acts.

6. Resolved, that the national legislature ought to be empowered to enjoy the legislative rights vested in Congress by the Confederation, and moreover to legislate in all cases to which the separate states are incompetent; or in which the harmony of the United States may be interrupted by the exercise of individual legislation; to negative all laws passed by the several states contravening in the opinion of the national legislature, the Articles of Union, or any treaties subsisting under the authority of the Union.

7. Resolved, that the rights of suffrage in the first branch of the national legislature ought not to be according to the rule established in the Articles of Confederation but according to some equitable ratio of representation, namely, in proportion to the whole number of white and other free citizens and inhab-

itants, of every age, sex, and condition, including those bound to servitude for a term of years, and three-fifths of all other persons, not comprehended in the foregoing description, except Indians not paying taxes in each state.

8. Resolved, that the right of suffrage in the second branch of the national legislature ought to be according to the rule established for the first.

9. Resolved, that a national executive be instituted to consist of a single person, to be chosen by the national legislature for the term of seven years, with power to carry into execution the national laws, to appoint to offices in cases not otherwise provided for—to be ineligible a second time, and to be removable on impeachment and conviction of malpractices or neglect of duty—to receive a fixed stipend by which he may be compensated for the devotion of his time to the public service to be paid out of the national treasury.

10. Resolved, that the national executive shall have a right to negative any legislative act which shall not be afterwards passed by two-thirds of each branch of the national legislature.

11. Resolved, that a national judiciary be established, to consist of one supreme tribunal, the judges of which shall be appointed by the second branch of the national legislature, to hold their offices during good behavior, and to receive punctually at stated times a fixed compensation for their services, in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution.

12. Resolved, that the national legislature be empowered to appoint inferior tribunals.

13. Resolved, that the jurisdiction of the national judiciary shall extend to all cases which respect the collection of the national revenue, impeachments of any national officers, and questions which involve the national peace and harmony.

14. Resolved, that provision ought to be made for the admission of states lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory or otherwise, with the consent of a number of voices in the national legislature less than the whole.

15. Resolved, that provision ought to be made for the continuance of Congress and their authorities and privileges until a given day after the reform of the Articles of Union shall be adopted and for the completion of all their engagements.

16. Resolved, that a republican constitution and its existing laws ought to be guaranteed to each state by the United States.

17. Resolved, that provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary.

18. Resolved, that the legislative, executive and judiciary powers within the several states ought to be bound by oath to support the Articles of Union.

19. Resolved, that the amendments which shall be offered to the Confederation by the Convention ought at a proper time or times after the approbation of Congress to be submitted to an assembly or assemblies recommended by the several legislatures to be expressly chosen by the people to consider and decide thereon.

### Development of Fundamentals

[This stage is so called because the Convention devoted its sessions to the discussion of fundamentals from June 19 to July 26. Naturally, it made the recommendations of the Committee of the Whole the basis of these deliberations. Wisely it avoided the consideration of details. Structural fundamentals were agreed upon without difficulty, notwithstanding efforts to approve certain features of the existing Confederation. Crucial differences arose on the question of representation, especially in the Senate. Fortunately these difficulties were compromised with the assistance of special committees, and the most threatening obstacle to the development of the new federal system was thereby removed. These fundamentals were embodied in twenty-three resolutions which were referred to the Committee of Detail on July 26.]

### FUNDAMENTALS REFERRED TO COMMITTEE OF DETAIL

1. Resolved, that the government of the United States ought to consist of a supreme legislative, judiciary, and executive.

2. Resolved, that the legislature consist of two branches.

3. Resolved, that the members of the first branch of the legislature ought to be elected by the people of the several states, for the term of two years; to be paid out of the public treasury; to receive an adequate compensation for their services; to be of the age of twenty-five years at least; to be ineligible to and incapable of holding any office under the authority of the United States (except those peculiarly belonging to the functions of the first branch) during the term of service of the first branch.

4. Resolved, that the members of the second branch of the legislature of the United States ought to be chosen by the individual legislatures; to be of the age of thirty years at least; to hold their offices for six years, one-third to go out biennially; to receive a compensation for the devotion of their time to the public service; to be ineligible to and incapable of holding any office, under the authority of the United States (except those peculiarly belonging to the functions of the second branch), during the term for which they are elected, and for one year thereafter.

5. Resolved, that each branch ought to possess the right of originating acts.

6. Resolved, that the national legislature ought to possess the legislative rights vested in Congress by the Confederation; and moreover, to legislate in all cases for the general interests of the Union, and also in those to which the states are separately incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation.

7. Resolved, that the legislative acts of the United States, made by virtue and in pursuance of the Articles of Union, and all treaties made and ratified under the authority of the United States, shall be the supreme law of the respective states, as far as those acts or treaties shall relate to the said states, or their citizens and inhabitants; and that the judiciaries of the several states shall be bound thereby in their decisions, any thing in the respective laws of the individual states to the contrary, notwithstanding.

8. Resolved, that in the original formation of the legislature of the United States, the first branch thereof shall consist of sixty-five members; of which number

New Hampshire shall send three,
Massachusetts ..... eight,
Rhode Island ..... one,
Connecticut ..... five,
New York ..... six,
New Jersey ..... four,
Pennsylvania ..... eight,
Delaware ..... one,
Maryland ..... six,
Virginia ..... ten,
North Carolina ..... five,
South Carolina ..... five,
Georgia ..... three.

But as the present situation of the states may probably alter in the number of their inhabitants, the legislature of the United States shall be authorized, from time to time, to apportion the number of representatives; and in case any of the states shall hereafter be divided, or enlarged by addition of territory, or any two or more states united, or any new states created within the limits of the United States, the legislature of the United States shall possess authority to regulate the number of representatives, in any of the foregoing cases, upon the principle of their number of inhabitants according to the provisions hereafter mentioned, namely, provided always that representation ought to be proportioned to direct taxation. And in order to ascertain the alteration in the direct taxation which may be required from time to time by the changes in the relative circumstances of the states—

9. Resolved, that a census be taken within six years from the first meeting of the legislature of the United States, and once within the term of every ten years afterwards, of all the inhabitants of the United States, in the manner and according to the ratio recommended by Congress in their resolution of April 18, 1783; and that the legislature of the United States shall proportion the direct taxation accordingly.

10. Resolved, that all bills for raising or appropriating money, and for fixing the salaries of the officers of the government of the United States, shall originate in the first branch of the legis-

lature of the United States, and shall not be altered or amended by the second branch; and that no money shall be drawn from the public treasury, but in pursuance of appropriations to be originated by the first branch.

11. Resolved, that in the second branch of the legislature of the United States, each state shall have an equal vote.

12. Resolved, that a national executive be instituted, to consist of a single person; to be chosen by the national legislature, for the term of seven years; to be ineligible a second time; with power to carry into execution the national laws; to appoint to offices in cases not otherwise provided for; to be removable on impeachment, and conviction of malpractice or neglect of duty; to receive a fixed compensation for the devotion of his time to the public service; to be paid out of the public treasury.

13. Resolved, that the national executive shall have a right to negative any legislative act, which shall not be afterwards passed, unless by two-third parts of each branch of the national legislature.

14. Resolved, that a national judiciary be established, to consist of one supreme tribunal, the judges of which shall be appointed by the second branch of the national legislature; to hold their offices during good behavior; to receive punctually, at stated times, a fixed compensation for their services, in which no diminution shall be made, so as to affect the persons actually in office at the time of such diminution.

15. Resolved, that the national legislature be empowered to appoint inferior tribunals.

16. Resolved, that the jurisdiction of the national judiciary shall extend to cases arising under laws passed by the general legislature; and to such other questions as involve the national peace and harmony.

17. Resolved, that provision ought to be made for the admission of states lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the national legislature less than the whole.

18. Resolved, that a republican form of government shall be

guaranteed to each state; and that each state shall be protected against foreign and domestic violence.

19. Resolved, that provision ought to be made for the amendment of the Articles of Union, whensoever it shall seem necessary.

20. Resolved, that the legislature, executive, and judiciary powers within the several states and of the national government, ought to be bound, by oath, to support the Articles of Union.

21. Resolved, that the amendments which shall be offered to the Confederation by the Convention ought, at a proper time or times after the approbation of Congress, to be submitted to an assembly or assemblies of representatives, recommended by the several legislatures, to be expressly chosen by the people to consider and decide thereon.

22. Resolved, that the representation in the second branch of the legislature of the United States shall consist of two members from each state, who shall vote per capita.

23. Resolved, that it be an instruction to the committee, to whom were referred the proceedings of the Convention for the establishment of a national government, to receive a clause or clauses, requiring certain qualifications of property and citizenship, in the United States, for the executive, the judiciary, and the members of both branches of the legislature of the United States.

### Development of Details

[Delegates, deliberating in Committee of the Whole and in convention, had directly and immediately determined the fundamentals they wished to embody in the constitution they were framing. But the task of supplementing these fundamentals with appropriate details could not be as well done by a relatively large body as by a select committee, hence the appointment on July 24 of a Committee of Detail. Its personnel is portrayed in Chapter 1. For ten days this able committee carried on the work of drafting, conferring, revising, and selecting from pertinent sources, material for their report. Apparently, Randolph and Wilson did the drafting, Rutledge as chairman recorded revi-

sions, Ellsworth and Gorham contributed suggestions. They drew upon the Articles of Confederation, the Pinckney plan, the New Jersey plan, and state constitutions, especially that of New York, for substantive parts of their report. In some instances they went beyond instructions contained in the resolutions on fundamentals, but in general their work conformed to those resolutions. Their elaboration of the broad principle of national power into an enumeration of eighteen specific powers was their outstanding contribution to the substance of the completed Constitution. The Convention devoted its sessions to the deliberations of this stage from August 6 to September 10, inclusive, meeting every day except Sunday.]

### REPORT OF COMMITTEE OF DETAIL

We the people of the states of New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, do ordain, declare, and establish the following Constitution for the government of ourselves and our posterity.

#### ARTICLE I

The style of the government shall be, "The United States of America."

#### ARTICLE II

The government shall consist of supreme legislative, executive, and judicial powers.

#### ARTICLE III

The legislative power shall be vested in a Congress, to consist of two separate and distinct bodies of men, a House of Representatives and a Senate; each of which shall in all cases have a negative on the other. The legislature shall meet on the first Monday in December in every year.

#### ARTICLE IV

Section 1. The members of the House of Representatives shall

be chosen every second year, by the people of the several states comprehended within this Union. The qualifications of the electors shall be the same, from time to time, as those of the electors in the several states, of the most numerous branch of their own legislatures.

Section 2. Every member of the House of Representatives shall be of the age of twenty-five years at least; shall have been a citizen in the United States for at least three years before his election; and shall be, at the time of his election, a resident of the state in which he shall be chosen.

Section 3. The House of Representatives shall, at its first formation, and until the number of citizens and inhabitants shall be taken in the manner hereinafter described, consist of sixty-five members, of whom three shall be chosen in New Hampshire, eight in Massachusetts, one in Rhode Island and Providence Plantations, five in Connecticut, six in New York, four in New Jersey, eight in Pennsylvania, one in Delaware, six in Maryland, ten in Virginia, five in North Carolina, five in South Carolina, and three in Georgia.

Section 4. As the proportions of numbers in different states will alter from time to time; as some of the states may hereafter be divided; as others may be enlarged by addition of territory; as two or more states may be united; as new states will be erected within the limits of the United States, the legislature shall, in each of these cases, regulate the number of representatives by the number of inhabitants, according to the provisions hereinafter made, at the rate of one for every forty thousand.

Section 5. All bills for raising or appropriating money, and for fixing the salaries of the officers of government, shall originate in the House of Representatives, and shall not be altered or amended by the Senate. No money shall be drawn from the public treasury but in pursuance of appropriations that shall originate in the House of Representatives.

Section 6. The House of Representatives shall have the sole power of impeachment. It shall choose its Speaker and other officers.

Section 7. Vacancies in the House of Representatives shall

be supplied by writs of election from the executive authority of the state, in the representation from which they shall happen.

ARTICLE V

Section 1. The Senate of the United States shall be chosen by the legislatures of the several states. Each legislature shall choose two members. Vacancies may be supplied by the executive until the next meeting of the legislature. Each member shall have one vote.

Section 2. The senators shall be chosen for six years; but immediately after the first election they shall be divided, by lot, into three classes, as nearly as may be, numbered one, two, and three. The seats of the members of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, of the third class at the expiration of the sixth year, so that a third part of the members may be chosen every second year.

Section 3. Every member of the Senate shall be of the age of thirty years at least; shall have been a citizen in the United States for at least four years before his election; and shall be, at the time of his election, a resident of the state for which he shall be chosen.

Section 4. The Senate shall choose its own president and other officers.

ARTICLE VI

Section 1. The times and places and manner of holding the elections of the members of each house shall be prescribed by the legislature of each state; but their provisions concerning them may, at any time, be altered by the legislature of the United States.

Section 2. The legislature of the United States shall have authority to establish such uniform qualifications of the members of each house, with regard to property, as to the said legislature shall seem expedient.

Section 3. In each house a majority of the members shall constitute a quorum to do business; but a smaller number may adjourn from day to day.

Section 4. Each house shall be the judge of the elections, returns and qualifications of its own members.

Section 5. Freedom of speech and debate in the legislature shall not be impeached or questioned in any court or place out of the legislature; and the members of each house shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at Congress, and in going to and returning from it.

Section 6. Each house may determine the rules of its proceedings; may punish its members for disorderly behavior; and may expel a member.

Section 7. The House of Representatives, and the Senate, when it shall be acting in a legislative capacity, shall keep a journal of their proceedings, and shall, from time to time, publish them: and the yeas and nays of the members of each house, on any question, shall at the desire of one-fifth part of the members present, be entered on the journal.

Section 8. Neither house, without the consent of the other, shall adjourn for more than three days, nor to any other place than that at which the two houses are sitting. But this regulation shall not extend to the Senate, when it shall exercise the powers mentioned in the ——— article.

Section 9. The members of each house shall be ineligible to, and incapable of holding any office under the authority of the United States, during the time for which they shall respectively be elected: and the members of the Senate shall be ineligible to, and incapable of holding any such office for one year afterwards.

Section 10. The members of each house shall receive a compensation for their services, to be ascertained and paid by the state in which they shall be chosen.

Section 11. The enacting style of the laws of the United States shall be, "Be it enacted, and it is hereby enacted, by the House of Representatives, and by the Senate of the United States, in Congress assembled."

Section 12. Each house shall possess the right of originating bills, except in the cases before-mentioned.

Section 13. Every bill which shall have passed the House of Representatives and the Senate shall, before it becomes a law, be presented to the President of the United States for his revision: if, upon such revision, he approve of it, he shall signify his approbation by signing it: But if, upon such revision, it shall appear to him improper for being passed into a law, he shall return it, together with his objections against it, to that house in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider the bill. But if, after such reconsideration, two-thirds of that house shall, notwithstanding the objections of the President, agree to pass it, it shall together with his objections, be sent to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the other house also, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for or against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within seven days after it shall have been presented to him, it shall be a law, unless the legislature, by their adjournment, prevent its return; in which case it shall not be a law.

ARTICLE VII

Section 1. The legislature of the United States shall have the power to lay and collect taxes, duties, imposts and excises;

To regulate commerce with foreign nations, and among the several states;

To establish an uniform rule of naturalization throughout the United States;

To coin money;

To regulate the value of foreign coin;

To fix the standard of weights and measures;

To establish post offices;

To borrow money, and emit bills on the credit of the United States;

To appoint a treasurer by ballot;

To constitute tribunals inferior to the Supreme Court;

To make rules concerning captures on land and water;

To declare the law and punishment of piracies and felonies committed on the high seas, and the punishment of counterfeiting the coin of the United States, and of offenses against the law of nations;

To subdue a rebellion in any state, on the application of its legislature;

To make war;

To raise armies;

To build and equip fleets;

To call forth the aid of the militia, in order to execute the laws of the Union, enforce treaties, suppress insurrections, and repel invasions.

And to make all laws that shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or office thereof.

Section 2. Treason against the United States shall consist only in levying war against the United States, or any of them; and in adhering to the enemies of the United States, or any of them. The legislature of the United States shall have power to declare the punishment of treason. No person shall be convicted of treason unless on the testimony of two witnesses. No attainder of treason shall work corruption of blood, nor forfeiture, except during the life of the person attainted.

Section 3. The proportions of direct taxation shall be regulated by the whole number of white and other free citizens and inhabitants, of every age, sex and condition, including those bound to servitude for a term of years, and three-fifths of all other persons not comprehended in the foregoing description (except Indians not paying taxes), which number shall, within six years after the first meeting of the legislature, and within the term of every ten years afterwards, be taken in such a manner as the said legislature shall direct.

Section 4. No tax or duty shall be laid by the legislature on articles exported from any state; nor on the migration or importation of such persons as the several states shall think proper

to admit; nor shall such migration or importation be prohibited.

Section 5. No capitation tax shall be laid, unless in proportion to the census hereinbefore directed to be taken.

Section 6. No navigation act shall be passed without the assent of two-thirds of the members present in the each house.

Section 7. The United States shall not grant any title of nobility.

ARTICLE VIII

The acts of the legislature of the United States made in pursuance of this Constitution, and all treaties made under the authority of the United States shall be the supreme law of the several states, and of their citizens and inhabitants; and the judges in the several states shall be bound thereby in their decisions; any thing in the constitutions or laws of the several states to the contrary notwithstanding.

ARTICLE IX

Section 1. The Senate of the United States shall have power to make treaties, and to appoint ambassadors and judges of the Supreme Court.

Section 2. In all disputes and controversies now subsisting, or that may hereafter subsist between two or more states, respecting jurisdiction or territory, the Senate shall possess the following powers. Whenever the legislature, or the executive authority, or lawful agent of any state, in controversy with another, shall by memorial to the Senate, state the matter in question, and apply for a hearing, notice of such memorial and application shall be given by order of the Senate to the legislature or the executive authority of the other state in controversy. The Senate shall also assign a day for the appearance of the parties, by their agents, before that house. The agents shall be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question. But if the agents cannot agree, the Senate shall name three persons out of each of the several states; and from the list of such persons each party shall alternately strike out one, until the number shall be reduced to thirteen; and from that number not less than seven

nor more than nine names, as the Senate shall direct, shall in their presence, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them shall be commissioners or judges to hear and finally determine the controversy; provided a majority of the judges who shall hear the cause agree in the determination. If either party shall neglect to attend at the day assigned, without showing sufficient reasons for not attending, or being present shall refuse to strike, the Senate shall proceed to nominate three persons out of each state, and the clerk of the Senate shall strike in behalf of the party absent or refusing. If any of the parties shall refuse to submit to the authority of such court; or shall not appear to prosecute or defend their claim or cause, the court shall nevertheless proceed to pronounce judgment. The judgment shall be final and conclusive. The proceedings shall be transmitted to the president of the Senate, and shall be lodged among the public records, for the security of the parties concerned. Every commissioner shall, before he sit in judgment, take an oath, to be administered by one of the judges of the supreme or superior court of the state where the cause shall be tried, "well and truly to hear and determine the matter in question according to the best of his judgment, without favor, affection, or hope of reward."

Section 3. All controversies concerning lands claimed under different grants of two or more states, whose jurisdictions, as they respect such lands shall have been decided or adjusted subsequently to such grants, or any of them, shall, on application to the Senate, be finally determined, as near as may be, in the same manner as is before prescribed for deciding controversies between different states.

### ARTICLE X

Section 1. The executive power of the United States shall be vested in a single person. His style shall be, "The President of the United States of America"; and his title shall be, "His Excellency." He shall be elected by ballot by the legislature. He shall hold his office during the term of seven years; but shall not be elected a second time.

Section 2. He shall, from time to time, give information to the legislature of the state of the Union: he may recommend to their consideration such measures as he shall judge necessary and expedient: he may convene them on extraordinary occasions. In case of disagreement between the two houses with regard to the time of adjournment, he may adjourn them to such time as he thinks proper: he shall take care that the laws of the United States be duly and faithfully executed: he shall commission all the officers of the United States; and shall appoint officers in all cases not otherwise provided for by this Constitution. He shall receive ambassadors, and may correspond with the supreme executives of the several states. He shall have power to grant reprieves and pardons; but his pardon shall not be pleadable in bar of an impeachment. He shall be Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several states. He shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during his continuance in office. Before he shall enter on the duties of his department, he shall take the following oath or affirmation, "I ——— solemnly swear (or affirm) that I will faithfully execute the office of President of the United States of America." He shall be removed from his office on impeachment by the House of Representatives, and conviction in the Supreme Court, of treason, bribery, or corruption. In case of his removal as aforesaid, death, resignation, or disability to discharge the powers and duties of his office, the president of the Senate shall exercise those powers and duties until another President of the United States be chosen, or until the disability of the President be removed.

ARTICLE XI

Section 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as shall, when necessary, from time to time, be constituted by the legislature of the United States.

Section 2. The judges of the Supreme Court, and of the inferior courts, shall hold their offices during good behavior.

They shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 3. The jurisdiction of the Supreme Court shall extend to all cases arising under laws passed by the legislature of the United States; to all cases affecting ambassadors, other public ministers and consuls; to the trial of impeachments of officers of the United States; to all cases of admiralty and maritime jurisdiction; to controversies between two or more states (except such as shall regard territory or jurisdiction), between a state and citizens of another state, between citizens of different states, and between a state or the citizens thereof and foreign states, citizens or subjects. In cases of impeachment, cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, this jurisdiction shall be original. In all the other cases before-mentioned, it shall be appellate, with such exceptions and under such regulations as the legislature shall make. The legislature may assign any part of the jurisdiction above-mentioned (except the trial of the President of the United States) in the manner, and under the limitations which it shall think proper, to such inferior courts as it shall constitute from time to time.

Section 4. The trial of all criminal offenses (except in cases of impeachments) shall be in the state where they shall be committed; and shall be by jury.

Section 5. Judgment, in cases of impeachment, shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States. But the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment according to law.

### ARTICLE XII

No state shall coin money; nor grant letters of marque and reprisal; nor enter into any treaty, alliance, or confederation; nor grant any title of nobility.

ARTICLE XIII

No state, without the consent of the legislature of the United States, shall emit bills of credit, or make any thing but specie a tender in payment of debts; nor lay imposts or duties on imports; nor keep troops or ships of war in time of peace; nor enter into any agreement or compact with another state, or with any foreign power; nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent as not to admit of delay until the legislature of the United States can be consulted.

ARTICLE XIV

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

ARTICLE XV

Any person charged with treason, felony, or high misdemeanor in any state, who shall flee from justice, and shall be found in any other state, shall, on demand of the executive power of the state from which he fled, be delivered up and removed to the state having jurisdiction of the offense.

ARTICLE XVI

Full faith shall be given in each state to the acts of the legislatures, and to the records and judicial proceedings of the courts and magistrates of every other state.

ARTICLE XVII

New states lawfully constituted or established within the limits of the United States may be admitted, by the legislature, into this government; but to such admission, the consent of two-thirds of the members present in each house shall be necessary. If a new state shall arise within the limits of any of the present states, the consent of the legislatures of such states shall be also necessary to its admission. If the admission be consented to, the new states shall be admitted on the same terms with the original states. But the legislature may make conditions with the new states concerning the public debt which shall be then subsisting.

ARTICLE XVIII

The United States shall guarantee to each state a republican form of government; and shall protect each state against foreign invasions, and, on the application of its legislature, against domestic violence.

ARTICLE XIX

On the application of the legislatures of two-thirds of the states in the Union for an amendment of this Constitution, the legislature of the United States shall call a convention for that purpose.

ARTICLE XX

The members of the legislatures, and the executive and judicial officers of the United States, and of the several states, shall be bound by oath to support this Constitution.

ARTICLE XXI

The ratifications of the conventions of ——— states shall be sufficient for organizing this Constitution.

ARTICLE XXII

This Constitution shall be laid before the United States in Congress assembled, for their approbation; and it is the opinion of this Convention that it should be afterwards submitted to a convention chosen in each state, under the recommendation of its legislature, in order to receive the ratification of such convention.

ARTICLE XXIII

To introduce this government, it is the opinion of this Convention that each assenting convention should notify its assent and ratification to the United States in Congress assembled; that Congress, after receiving the assent and ratification of the conventions of ——— states, should appoint and publish a day, as early as may be, and appoint a place for commencing proceedings under this Constitution; that after such publication, the legislatures of the several states should elect members of the

Senate, and direct the election of members of the House of Representatives; and that the members of the legislature should meet at the time and place assigned by Congress, and should, as soon as may be, after their meeting, choose the President of the United States, and proceed to execute this Constitution.

### Concluding Deliberations

[The prolonged processes of modification, elaboration, and correlation that took place during the stage when the report of the Committee of Detail was under consideration developed the need for a special committee to arrange final decisions in logical order, and to phrase them concisely and precisely. Hence arose the distinguished Committee on Style and Arrangement explained elsewhere (Chapter 1). On Monday, September 10, the final session of the Convention devoted to the elaboration of details was held. On Wednesday, September 12, the report of this Committee on Style and Arrangement was made. In this incredibly short time Gouverneur Morris, to whom the task of preparation had been given by Dr. Johnson as chairman, drafted the celebrated document which became, with few changes, the completed Constitution. It deserves the praise that has been given it, although its arrangement of provisions is not perfect. In four days after receiving it, the Convention scrutinized its parts and compared them with the proceedings referred to the committee. By September 17 this work was completed and the final draft was unanimously approved by the states represented on that day.]

### Report of Committee on Style and Arrangement

We, the people of the United States, in order to form a more perfect union, to establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I

Section 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to servitude for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every forty thousand, but each state shall have at least one representative: and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and they shall have the sole power of impeachment.

Section 3. The Senate of the United States shall be com-

posed of two senators from each state, chosen by the legislature thereof, for six years: and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided by lot as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year: and if vacancies happen by resignation or otherwise during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The Vice President of the United States shall be ex officio president of the Senate, but shall have no vote unless they be equally divided.

The Senate shall choose their other officers, and also a president pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Section 4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof: but the Congress may at any time by law make or alter such regulations.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business: but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceedings; punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Section 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Section 7. The enacting style of the laws shall be, "Be it

enacted by the senators and representatives in Congress assembled."

All bills for raising revenue shall originate in the House of Representatives: but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States. If he approve, he shall sign it, but if not, he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by three-fourths of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8. The Congress may by joint ballot appoint a treasurer. They shall have power

To lay and collect taxes, duties, imposts and excises; to pay the debts and provide for the common defense and general welfare of the United States.

To borrow money on the credit of the United States.

To regulate commerce with foreign nations, among the several states, and with the Indian tribes.

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

To provide for the punishment of counterfeiting the securities and current coin of the United States.

To establish post offices and post roads.

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

To constitute tribunals inferior to the Supreme Court.

To define and punish piracies and felonies committed on the high seas, and punish offenses against the law of nations.

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

To raise and support armies: but no appropriation of money to that use shall be for a longer term than two years.

To provide and maintain a navy.

To make rules for the government and regulation of the land and naval forces.

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions.

To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of

forts, magazines, arsenals, dockyards, and other needful buildings; and—

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9. The migration or importation of such persons as the several states now existing shall think proper to admit shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder shall be passed, nor any ex post facto law.

No capitation tax shall be laid, unless in proportion to the census herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No money shall be drawn from the treasury but in consequence of appropriations made by law.

No title of nobility shall be granted by the United States. And no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Section 10. No state shall coin money or emit bills of credit, or make any thing but gold or silver coin a tender in payment of debts, or pass any bill of attainder, or ex post facto laws, or laws altering or impairing the obligation of contracts; or grant letters of marque and reprisal, or enter into any treaty, alliance, or confederation, or grant any title of nobility.

No state shall, without the consent of Congress, lay imposts or duties on imports or exports, or with such consent, but to the use of the treasury of the United States. Or keep troops or ships

of war in time of peace, or enter into any agreement or compact with another state, or with any foreign power. Or engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent as not to admit of delay until the Congress can be consulted.

ARTICLE II

Section 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected in the following manner:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in Congress: but no senator or representative shall be appointed an elector, nor any person holding an office of trust or profit under the United States.

The electors shall meet in their respective states and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the general government, directed to the president of the Senate. The president of the Senate shall in the presence of the Senate and House of Representatives open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list, the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by states and not per capita, the representation from each state having one vote. A quorum for this purpose shall consist of a member or

members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President by the representatives, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.

The Congress may determine the time of choosing the electors, and the time in which they shall give their votes; but the election shall be on the same day throughout the United States.

No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed, or the period for choosing another President arrive.

The President shall, at stated times, receive a fixed compensation for his services, which shall neither be increased nor diminished during the period for which he shall have been elected.

Before he enter on the execution of his office, he shall take the following oath or affirmation: "I ———, do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my judgment and power, preserve, protect and defend the Constitution of the United States."

Section 2. The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several states when called into the actual service of the United States; he may require the opinion, in writing, of the principal

officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section 3. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient: he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper: he shall receive ambassadors and other public ministers: he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section 4. The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

### ARTICLE III

Section 1. The judicial power of the United States, both in law and equity, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2. The judicial power shall extend to all cases, both in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority. To all cases affecting ambassadors, other public ministers and consuls. To all cases of admiralty and maritime jurisdiction. To controversies to which the United States shall be a party. To controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Section 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood nor forfeiture, except during the life of the person attainted.

ARTICLE IV

Section 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up and removed to the state having jurisdiction of the crime.

No person legally held to service or labor in one state, escaping into another, shall in consequence of regulations subsisting therein be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Section 3. New states may be admitted by the Congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States: and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Section 4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature or executive, against domestic violence.

### ARTICLE V

The Congress, whenever two-thirds of both houses shall deem necessary, or on the application of two-thirds of the legislatures of the several states, shall propose amendments to this Constitution, which shall be valid to all intents and purposes, as part thereof, when the same shall have been ratified by three-fourths at least of the legislatures of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided that no amend-

ment which may be made prior to the year 1808 shall in any manner affect the ——— and ——— sections of the ——— article.

ARTICLE VI

All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States under this Constitution as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before-mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII

The ratification of the conventions of nine states shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

## Completing the Constitution

[The stages of development outlined in introductions to documents printed in this chapter account in large measure for the excellence of the Constitution. They reveal, first, leadership of high quality in the initiation of plans, in the discussion of questions, and in the work of committees; second, at least one consideration, sometimes several, of every fundamental proposition before the Convention during each stage of development; third, votes of silent delegates who listened patiently and rendered sound verdicts; and fourth, correlations of agreements that

bound them into a harmonious whole. It was not a "work . . . struck off at a given time by the brain and purpose of man." It was rather an incorporation into the supreme law of the land of structures that had worked for centuries in English and American environments; of principles that had been tested and developed "for a time whereof the memory of man runneth not to the contrary"; of a spirit that adjusts it to new times and new conditions. An organic law that retains its vitality and efficacy after one hundred and fifty years of operation is a unique product of human capacity.]

### FINAL DRAFT

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

### ARTICLE I

Section 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those

bound to service for a term of years and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

Section 3. The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of the state for which he shall be chosen.

The Vice President of the United States shall be president of the Senate, but shall have no vote unless they be equally divided.

The Senate shall choose their other officers, and also a president pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

Section 4. The times, places, and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section 5. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy, and the yeas and nays of the

members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Section 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to or returning from the same, and for any speech or debate in either house they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Section 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal

of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return; in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8. The Congress shall have power—

To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States.

To borrow money on the credit of the United States.

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

To provide for the punishment of counterfeiting the securities and current coin of the United States.

To establish post offices and post roads.

To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.

To constitute tribunals inferior to the Supreme Court.

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations.

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years.

To provide and maintain a navy.

To make rules for the government and regulation of the land and naval forces.

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States—reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square), as may, by cession of particular states, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9. The migration or importation of such persons as any of the states, now existing, shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

No bill of attainder, or ex post facto law, shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury but in consequence of appropriations made by law: and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

Section 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the Congress. No state shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power; or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

### ARTICLE II

Section 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows: